

EVIDENTIARY HEARING  
BEFORE THE  
ENERGY RESOURCES CONSERVATION AND DEVELOPMENT  
COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:	)	
	)	
Application for Certification	)	Docket No.
for the Pio Pico Energy Center	)	11-AFC-01
<hr/>	)	

CHULA VISTA CITY HALL  
COUNCIL CHAMBERS  
276 FOURTH AVENUE  
CHULA VISTA, CALIFORNIA

MONDAY, JULY 23, 2012

2:30 p.m.

Reported by:

Martha L. Nelson, CERT 00367

COMMITTEE MEMBERS PRESENT

Carla Peterman, Presiding Member

Karen Douglas, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Raoul Renaud, Hearing Officer

Jim Bartridge, Advisor to Commissioner Peterman

Galen Lemei, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Adviser for Facility Siting

CEC STAFF PRESENT

Kevin Bell, Staff Counsel

Eric Solorio, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Melissa A. Foster  
Stoel Rives, LLP

David Jenkins  
Pio Pico Energy Center, LLC

Maggie Fitzgerald  
Sierra Research

INTERVENERS

Scott Williams  
Attorney at Law  
Corrections Corporation of America (CCA)

Robert Simpson (via WebEx)

Gretel Smith (via WebEx)  
Attorney for Robert Simpson

ALSO PRESENT

Steven Miller, San Diego Air Pollution Control District  
Ms. Forbis, Counsel, Air Pollution Control District

Bill Powers (via WebEx)

PUBLIC SPEAKER

Steven Miller, San Diego Air Pollution Control District

Carla Forbis, San Diego Air Pollution Control District

Lyn Harris Hicks, CREED (via WebEx)

James Avery, SDG&E

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APPLICANT

<u>Numbers</u>	<u>Marked for ID</u>	<u>Admitted</u>
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INTERVENOR SIMPSON

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P R O C E E D I N G S

2:33 p.m.

1  
2           PRESIDING MEMBER PETERMAN: This is Commissioner  
3 Carla Peterman with the California Energy Commission.  
4 Welcome to the Pio Pico Energy Center evidentiary hearing.  
5 First of all, thank you to Chula Vista for having us here in  
6 this lovely facility. And welcome, in advance, to everyone  
7 on WebEx.

8           I'm going to call things to order and do a round  
9 of introductions. So to my right we have the hearing  
10 officer, Hearing Officer Renaud, who will conduct this  
11 hearing. To his far right or immediate right we have  
12 Commissioner Karen Douglas who is the associate member of  
13 the siting committee. To Commissioner Douglas's right we  
14 have her Adviser, Galen Lemei. To my left is my Adviser,  
15 Jim Bartridge. To Mr. Bartridge's left is Eileen Allen who  
16 is the commissioners' technical adviser for siting.

17           And we have the Public Adviser, Jennifer Jennings,  
18 who is in the back of the room. And if you're a member of  
19 the public and wish to provide comment or participate,  
20 please see Ms. Jennings.

21           And now we'll have Staff and Applicant introduce  
22 themselves, before I see if there's anyone else from any  
23 other local or state agencies in the room or on the line.

24           So first, let's have Applicant introduce  
25 themselves.

1 MS. FOSTER: My name is Melissa Foster with Stoel  
2 Rives, Counsel for Applicant, Pio Pico Energy Center, LLC.  
3 To my left is David Jenkins with Pio Pico Energy Center,  
4 LLC. And to his left is Maggie Fitzgerald, Project Manager  
5 with Sierra Research.

6 PRESIDING MEMBER PETERMAN: Okay. Staff, please.

7 MR. BELL: Good afternoon, Commissioners. My name  
8 is Kevin Bell, Senior Staff Counsel with the California  
9 Energy Commission representing Staff in these proceedings.  
10 Seated with me at that dais is Eric Solorio, Project  
11 Manager.

12 PRESIDING MEMBER PETERMAN: Great. We have two  
13 interveners. Is Rob Simpson in the room or on the line?

14 MS. SMITH: Gretel Smith for Mr. Simpson. I am on  
15 the line.

16 PRESIDING MEMBER PETERMAN: Thank you, Ms. Smith,  
17 welcome. Our second intervener is Corrections Corporation  
18 of America. Anyone in the room or on the line?

19 Please come to the mike and introduce yourself,  
20 sir.

21 MR. WILLIAMS: Good afternoon. My name is Scott  
22 Williams. I am Counsel for Intervener, Corrections  
23 Corporation of America, or CCA. Thank you.

24 PRESIDING MEMBER PETERMAN: Thank you. First, do  
25 we have anyone from Chula Vista who would like to speak, or

1 the local area, any government officials or other local  
2 agency representatives?

3 MR. MILLER: Steven Miller with the San Diego Air  
4 Pollution Control District.

5 PRESIDING MEMBER PETERMAN: Welcome, Mr. Moore.

6 MR. MILLER: Thank you.

7 MS. FORBIS: Carla Forbis, Counsel to the Air  
8 Pollution Control District.

9 PRESIDING MEMBER PETERMAN: Thank you. Anyone  
10 else present in the room that wishes to speak?

11 On the line, is there anyone from the local  
12 government or any other government agencies?

13 With that, I think that's all for introductions.  
14 So let me now turn to Hearing Officer Renaud to -- to get it  
15 started.

16 HEARING OFFICER RENAUD: Thank you, Commissioner  
17 Peterman. Okay. Well, we made it. The Sacramento  
18 contingent, I think you might have heard, was scheduled for  
19 an 8:45 flight. We were on time for it, but the plane just  
20 was not up to it. And they took it out of service, and we  
21 waited until about 12 noon until they finally -- we finally  
22 took off on that replacement plane. But we made it, and  
23 here we are. And it's nice to be here. And I'm looking  
24 forward to our having a productive hearing for the Pio Pico  
25 Energy Center Project.

1           Just a few remarks about what we're here to do  
2 today. This is the evidentiary hearing. And this is --  
3 this is probably the most important hearing of the Energy  
4 Commission's application for certification process. This is  
5 the hearing in which we establish the formal evidentiary  
6 record upon which the decision will be based. By  
7 establishing an evidentiary record, I mean that we very  
8 much, like as we do in court, take into the record evidence  
9 and testimony under oath. We listen to direct examination,  
10 cross-examination, rebuttal testimony, and we might even go  
11 as far as surrebuttal testimony in order to give all the  
12 parties an opportunity to hear the evidence and challenge  
13 it.

14           At the conclusion of the evidentiary hearing we  
15 close the record. And that set of evidence then becomes the  
16 formal record upon which the decision is based.

17           The entire proceeding is being stenographically  
18 recorded and will be converted into a written transcript  
19 that will be available for all to read and comment upon.

20           And after the conclusion of the evidentiary  
21 hearings, within a matter of a few weeks, the presiding  
22 members proposed decision will be issued. This is a lengthy  
23 document that will cover all of the environmental areas and  
24 will basically summarize the -- the evidence and the  
25 testimony and provide the presiding members recommendation

1 to the full commission concerning the environmental impacts  
2 of the project and under what conditions it should or --  
3 should be licensed or, perhaps, should not be licensed.

4 Excuse me.

5           Since the burden of establishing the evidence is  
6 on the applicant, we proceed with the applicant first in  
7 these -- in these matters, followed by the evidentiary --  
8 followed by the commission staff. The staff reviews the  
9 application for certification, conducts an independent  
10 review and provides testimony concerning that. After that  
11 we proceed with our intervenors in this case. In this case  
12 Mr. Simpson intervened first, so he will go first, followed  
13 by Corrections Corporation of America.

14           All testimony is under oath. Testimony, however,  
15 does not need to be oral testimony. In fact, in these cases  
16 most of the testimony is written. It is submitted in  
17 writing, accompanied by a declaration of the author of the  
18 testimony. And only upon request of a party would the  
19 author of the written testimony appear to -- to testify in  
20 person. Requests for appearance of witnesses in person is  
21 made at the prehearing conference, which we conducted two  
22 weeks ago.

23           The -- the written testimony is submitted by each  
24 party, and it is expected that the other parties will have  
25 reviewed and become familiar with it so that they can either

1 state an objection to any of the testimony or can indicate  
2 that they have no objection to its admission into the  
3 record.

4 Almost all of the testimony in these matters comes  
5 from expert witnesses. Since these are scientific  
6 discipline, typically the witnesses are scientists. And it  
7 is necessary under California Law that they be credentialed  
8 so that they can be admitted as expert witnesses whose  
9 opinions is evidence worthy. Typically the expert witnesses  
10 resumes are attached to their testimony. And again, the  
11 parties have an opportunity to review those and to object to  
12 the qualifications of any of the witnesses otherwise, so  
13 they'd stipulate that the witness is -- shall be or may be  
14 admitted as an expert.

15 When we get to cross-examination the parties have  
16 an opportunity to question witnesses about their testimony.  
17 Cross-examination is limited to the areas that the witness  
18 testified about. Again, with written testimony you don't  
19 have a witness sitting there to whom you can walk up and say  
20 you just said such and such and I want you to think about  
21 this other way of looking at it. So if you want to cross  
22 examine written testimony you need to have been familiar  
23 with it in advance and either requested the witnesses  
24 presence or have prepared questions.

25 The California Law Legal Rules of Evidence are

1 generally followed here. We're a little more liberal in  
2 admitting evidence than one would be in a court of law,  
3 mostly because we want to provide everybody the opportunity  
4 to -- to bring into the evidentiary record any material that  
5 might be useful to the -- to the commission in making a  
6 decision.

7 Now, the parties at the prehearing conference  
8 submitted their witness lists an exhibit lists. And we have  
9 since then compiled those into -- or compiled the exhibit  
10 list into a single document called the tentative exhibit  
11 list, which I think all the parties received my email, and  
12 I've also just passed out written copies, printed copies.

13 Let me ask if any of the parties have any  
14 corrections or changes or additions to the tentative exhibit  
15 list, starting with the applicant. I believe you do have  
16 two that I know of.

17 MS. FOSTER: Yes. Applicant has two additions to  
18 the exhibit list. Applicant would like to add Exhibit 130.

19 It's a letter from SDG&E that was sent to the commissioners  
20 last week that Applicant docketed on Friday, July 20th. And  
21 Exhibit 131 is correspondence that was docketed last night,  
22 July 22nd, related to the proposed condition of  
23 certification Noise-4.

24 (Applicant's Exhibits Nos. 130 and 131, Marked)

25 HEARING OFFICER RENAUD: All right. Thank you.

1 MS. SMITH: May we have an opportunity at this  
2 time to object to Exhibit Number 130?

3 HEARING OFFICER RENAUD: Yes, you will at -- when  
4 we get there. Right now we're just looking for changes to  
5 the tentative exhibit list. And once we have the lists  
6 down, then we'll go into whether -- whether or not the items  
7 on the list can be admitted. So that's when we'll ask for  
8 objections. Okay. Thank you.

9 Staff, any changes or additions?

10 MR. BELL: The only addition Staff has at this  
11 time is the inclusion of David Vidaver's surrebuttal  
12 testimony, which we ask be marked Exhibit Number 206.

13 (Staff's Exhibit No. 206, Marked)

14 HEARING OFFICER RENAUD: All right. Okay. Now,  
15 also in your prehearing conference statement Staff had some  
16 rebuttal testimony. Did you want to add that as an exhibit?  
17 We could just mark it for identification.

18 MR. BELL: Separately, as 207.

19 HEARING OFFICER RENAUD: 207. Okay.

20 (Staff's Exhibit No. 207, Marked)

21 And going back to Applicant, by the way, I'm not  
22 sure if we said this, but the letter from SDG&E will be 130.  
23 And the letter regarding condition Noise-4 will be 131.

24 MS. FOSTER: Correct.

25 HEARING OFFICER RENAUD: All right.

1           Ms. Smith, does Mr. Simpson have any changes to  
2 the exhibit list?

3           MS. SMITH: Do we have any objections?

4           HEARING OFFICER RENAUD: No.

5           MS. SMITH: We actually are objecting to the SDG&E  
6 letter.

7           HEARING OFFICER RENAUD: All right. No. I'm  
8 not -- I'm looking for any changes or additions or --

9           MS. SMITH: Oh, any changes. I apologize. I do  
10 not believe we do have any changes, except for the one  
11 exhibit we wanted to add on July 9th which was, I believe,  
12 exhibit 303, which would have been the (inaudible) storage.

13           HEARING OFFICER RENAUD: All right. I have that.  
14 And I also received some material from Mr. Powers that I've  
15 entitled Powers Rebuttal and noted as 304. Is that -- is  
16 that --

17           MS. SMITH: Correct.

18           HEARING OFFICER RENAUD: -- something that we had  
19 not submitted before?

20           MS. SMITH: We had not submitted that before.  
21 That is in response to the -- their rebuttal testimony of  
22 Mr. Vidaver. And so we would like to have that added.

23           HEARING OFFICER RENAUD: That's response to the  
24 surrebuttal of -- from Staff by Mr. Vidaver?

25           PRESIDING MEMBER PETERMAN: Vidaver.

1 HEARING OFFICER RENAUD: Vidaver. I'm sorry.

2 MS. SMITH: Vidaver.

3 HEARING OFFICER RENAUD: Yeah.

4 MS. SMITH: Thank you.

5 HEARING OFFICER RENAUD: All right. Well, we'll  
6 mark that 304 for identification.

7 (Intervener Simpson's Exhibit No. 304, Marked)

8 HEARING OFFICER RENAUD: Okay. And then,  
9 Corrections Corporation of America, any changes or  
10 additions.

11 MR. WILLIAMS: No, sir. No changes or additions.

12 HEARING OFFICER RENAUD: All right. Good. I do  
13 see that you put down final staff assessment as Exhibit 408.  
14 And I can tell you we're not going to add that because it's  
15 already in as 200, and we don't need two copies of that.

16 MR. WILLIAMS: I understand.

17 HEARING OFFICER RENAUD: Thousands of pages.

18 MR. WILLIAMS: Right.

19 HEARING OFFICER RENAUD: Okay. Thanks. All  
20 right.

21 And are there any -- now we want to find out if  
22 there any witnesses who have not previously been disclosed,  
23 starting with Applicant.

24 MS. FOSTER: No.

25 HEARING OFFICER RENAUD: No.

1 MS. FOSTER: No, I have no other witnesses.

2 HEARING OFFICER RENAUD: Staff?

3 MR. BELL: No.

4 HEARING OFFICER RENAUD: All right. Simpson? Ms.  
5 Smith, any -- any new witnesses you have not disclosed?

6 MS. SMITH: I do not believe we have any new  
7 witnesses.

8 HEARING OFFICER RENAUD: All right. Thank you.  
9 CCA?

10 MR. WILLIAMS: None for CCA.

11 HEARING OFFICER RENAUD: All right. Thanks.

12 Okay. Just a couple more remarks before we go into the --  
13 the work of creating this evidentiary record. Obviously, we  
14 up here are using our microphones. That's partially so you  
15 can hear us, and partly so we can make sure to have a clear  
16 record. So let's make sure that whenever you speak use a  
17 microphone. If you -- if you're in the audience come up and  
18 use the one here in front of us.

19 Also present in the room is Jennifer Jennings, our  
20 public adviser. And she has a -- do you have a table,  
21 actually?

22 MS. JENNINGS: Yes.

23 HEARING OFFICER RENAUD: Okay. There's a table  
24 out in the hallway there where if you are a member of the  
25 public and wish to comment you can fill out a blue card, and

1 that will get up here, and we'll call you at the time for  
2 public comment. She can also assist you with any questions  
3 regarding participation in the proceedings.

4 And with that I think we're underway. The  
5 schedule today was for us to start at 2:30, which we did.  
6 We're hoping to go until about five o'clock with the  
7 evidentiary presentations, or to be finished by then. I  
8 think that's probably fairly realistic, although I'm -- I'm  
9 not sure how much time we're going to be spending on noise,  
10 but you can tell me about that pretty soon. And then at  
11 5:30 we've scheduled the public comment period to begin.  
12 All right.

13 When we held the prehearing conference it was --  
14 we -- we learned that there was what we'll refer to as a  
15 dispute between or among parties regarding -- regarding the  
16 noise section, and particularly a condition of certification  
17 concerning the noise conditions from the project. And we  
18 left it that a workshop would be held today at which that  
19 could be discussed.

20 And maybe I'll turn to the applicant and ask if  
21 you would tell -- summarize what happened today.

22 MS. FOSTER: First and foremost, I want to let the  
23 commissioners and the hearing officer know the -- that CCA  
24 and Applicant came to a resolution regarding their dispute  
25 related to Noise-4 that was docketed last night. That is

1 the new Applicant's proposed Exhibit 131. We met with staff  
2 in the public workshop this morning. Staff's noise expert  
3 was, I believe, on the same delayed flight and was not in  
4 attendance. So we did not get into the details of the  
5 discussion regarding the LT-1 and LT-2 issues with Noise-4.  
6 But we did discuss the -- the noise limit that they applied  
7 related to PPEC, as well as the proposed detention facility.  
8 Staff and Applicant did not come to a resolution on those  
9 issues, and those issues remain outstanding.

10 HEARING OFFICER RENAUD: All right. Mr. Bell,  
11 anything you want to add to that?

12 MR. BELL: We had hoped that we would have some  
13 fruitful discussions this morning. But, unfortunately,  
14 because of circumstances outside of our control our -- our  
15 witness couldn't be here. And without his input we weren't  
16 able to come to a resolution. I would offer that there is a  
17 possibility we might be able to, if at some point in these  
18 proceedings the committee would like to take a break, give  
19 us a chance to talk about that, that my obviate the need for  
20 any -- any litigation of those issues.

21 But I can say that based on my knowledge of it  
22 I -- I don't believe that that portion of it, even though  
23 it's outstanding, will -- will take very long to present. I  
24 think the factual evidence is not in dispute. It has to do  
25 with application of the county ordinances that remains in

1 dispute.

2 HEARING OFFICER RENAUD: Okay. I think your idea  
3 of giving you some time to discuss that during a break  
4 sounds like a good one, and we'll do that at an appropriate  
5 time. All right.

6 Okay. Now at the prehearing conference the -- the  
7 various topics that are set forth in the AFC were discussed.  
8 And the -- the committee then issued a hearing order at  
9 which we designated the topics that are not disputed and the  
10 topics that are. And so we have a list of uncontested  
11 topics, and then a list of contested topics. And the list  
12 of contested -- of uncontested topics is 14 topics long, and  
13 I'm just going to read it into the record: project  
14 description; facility design; cultural resources; power  
15 plant efficiency; transmission system engineering;  
16 transmission line safety and nuisance; reliability; public  
17 health; worker safety and fire protection; hazardous  
18 materials management; waste management; geology and  
19 paleontology; traffic and transportation; and visual  
20 resources.

21 Let me ask if Applicant agrees that those are the  
22 uncontested topics?

23 MS. FOSTER: Applicant concurs with that list.

24 HEARING OFFICER RENAUD: Staff, do you concur?

25 MR. BELL: We do concur. The only question we had

1 was at to socio and water?

2 MS. FOSTER: Applicant has the same question.

3 HEARING OFFICER RENAUD: They're not on the list?

4 MR. BELL: They're --

5 HEARING OFFICER RENAUD: Okay.

6 MR. BELL: They -- they're included on the -- an  
7 outline of today's hearing issues. However, I do note that  
8 in the hearing order that those two areas were not  
9 identified.

10 HEARING OFFICER RENAUD: The -- the reason that I  
11 included them in the contested topics for today is because  
12 Mr. Simpson had submitted rebuttal testimony from his  
13 witness, Mr. Sarvey, and that's in a timely fashion. So I  
14 would need to allow the opportunity for that testimony to be  
15 submitted into the record. I understand, though, that the  
16 applicant and the staff do not -- and CCA don't contest  
17 those though.

18 MR. BELL: If we can have just a moment.

19 HEARING OFFICER RENAUD: Sure.

20 MR. BELL: I'm sorry. I do note that in Mr.  
21 Simpson's prehearing conference statement he identified Mr.  
22 Sarvey as a witness, and he gave a summary of what his  
23 testimony would be. But staff doesn't have before it any  
24 testimony offered by Mr. Sarvey. We have a summary of what  
25 he would be testifying to, but I don't have anything about

1 what he's going to testify to. I believe Applicant may be  
2 in the same --

3 MS. FOSTER: The --

4 MR. BELL: -- the same boat.

5 MS. FOSTER: I'm noticing that there's Exhibit --

6 HEARING OFFICER RENAUD: 301.

7 MS. FOSTER: -- 301 is Robert Sarvey testimony.

8 But we also do not have testimony of Robert Sarvey.

9 HEARING OFFICER RENAUD: All right. Well,  
10 let's -- let's ask Mr. Smith if she can clear this up for  
11 us. Does Mr. Sarvey plan on testifying today?

12 MS. SMITH: I -- I believe he is present today.  
13 And I thought he was testifying today.

14 HEARING OFFICER RENAUD: Mr. Sarvey, are you here?

15 MS. ALLEN: He's not in this room.

16 HEARING OFFICER RENAUD: He's not in the room. Is  
17 he with -- is he on -- I don't see him on the phone either.

18 Are you on the phone, Mr. Sarvey?

19 What we received as Exhibit 301 from Mr. Simpson  
20 for Mr. Sarvey's testimony was his resume. And we were told  
21 at the prehearing conference that he would offer rebuttal  
22 testimony in the areas of socio-economics and water  
23 resources.

24 Should -- should we cross that off the list, Ms.  
25 Smith?

1 MS. SMITH: I'm going to try to contact him right  
2 now and see what he's -- find out where he is.

3 HEARING OFFICER RENAUD: All right.

4 MS. SMITH: But I was under the impression that he  
5 would be there today and would be offering his rebuttal  
6 testimony, perhaps in person.

7 MR. BELL: Well, if it helps, Mr. Renaud, I note  
8 that Staff has no -- we're not planning on crossing him on  
9 his resume --

10 HEARING OFFICER RENAUD: All right.

11 MR. BELL: -- which is all we have.

12 MS. SMITH: Okay.

13 HEARING OFFICER RENAUD: Okay. Well, so we'll  
14 leave socio and water as uncertain as to whether or not the  
15 parties are unanimous in not contesting those.

16 Let me ask CCA, by the way, do you concur with the  
17 list of uncontested topics that I read?

18 MR. WILLIAMS: Yes, we concur.

19 HEARING OFFICER RENAUD: All right. Okay. So  
20 let's -- let's -- we'll wait to hear about whether or not  
21 Mr. Sarvey will be testifying today.

22 (Colloquy Between Presiding Member Peterman and Hearing  
23 Officer Renaud)

24 HEARING OFFICER RENAUD: And Ms. Smith, let me ask  
25 you, other than the socio and water do you agree that the

1 other items that I read are the uncontested topics?

2 MS. SMITH: Yes.

3 HEARING OFFICER RENAUD: All right. Good Okay.

4 Now, the fact that a topic has been listed as  
5 uncontested simply means that the parties are in agreement  
6 about it. It doesn't necessarily mean that the committee  
7 doesn't have questions or concerns in that area. And, in  
8 fact, the committee will have some -- some questions at an  
9 appropriate time today regarding traffic and transportation.  
10 Okay.

11 Let's move on then to the contested topics. Now  
12 at the -- at the prehearing conference the -- the parties'  
13 evidentiary filings and our discussion and then the hearing  
14 order we issued identified those contested topics and  
15 identified the extent to which each party would present  
16 direct or rebuttal evidence and conduct cross-examination.  
17 And the parties have received a table today which sets forth  
18 those items.

19 Ms. Smith, since you're not here I wasn't able to  
20 give that to you. But it basically reflects what's set  
21 forth in the hearing order, and I'm sure you have that.

22 MS. SMITH: And I do have that.

23 HEARING OFFICER RENAUD: All right. Perfect.  
24 Okay. Good.

25 And the next step would really be to start in

1 on -- on one of the contested topics, which are air quality,  
2 alternatives, biology, land use, and noise. And I think  
3 I'll ask first from Applicant, do you have any witnesses to  
4 present in any of those areas?

5 MS. FOSTER: Applicant has witnesses available for  
6 air quality but will not be presenting any direct testimony.

7 HEARING OFFICER RENAUD: All right.

8 MS. FOSTER: The same is true for alternatives,  
9 and the same is true for biology. Applicant does have  
10 witnesses present to discuss noise, both a land use witness  
11 and a noise witness.

12 HEARING OFFICER RENAUD: All right. Okay. And do  
13 any of those witnesses have time constraints that we ought  
14 to take into account in determining where -- what to start  
15 with?

16 MS. FOSTER: They do not.

17 HEARING OFFICER RENAUD: All right. Staff, same  
18 question. Do you have a lot of witnesses today and any time  
19 constraints?

20 MR. BELL: We do have live witnesses in -- and in  
21 most of these areas we are relying on the written testimony,  
22 and we are offering the witnesses for questioning. For time  
23 constraints, Ann Crisp from biology is -- she's currently on  
24 the line. I know she has daycare issues, which is why she  
25 wasn't able to make her -- her way down here. She just

1 returned from -- returned from maternity leave. So we're  
2 fortunate to have her back.

3 And, also, Candace Hill will be joining us, I  
4 believe at 3:30. Candace has some -- she's available for  
5 some questioning in land use.

6 HEARING OFFICER RENAUD: All right. Would either  
7 Ann Crisp or Candace Hill be offering direct testimony or  
8 just being made available for others to cross exam?

9 Mr. Bell, one moment. I was -- I was asking you a  
10 question. With respect to those witnesses, will either of  
11 them be offered as a -- on direct or just as cross?

12 MR. BELL: Oh, just as cross.

13 HEARING OFFICER RENAUD: Available for cross?

14 MR. BELL: Yes.

15 HEARING OFFICER RENAUD: Okay. So -- all right.  
16 And Ms. Smith, for your direct testimony, the only witness  
17 we have under air quality is -- is Mr. Simpson. Will he be  
18 offering direct testimony today or is his testimony in  
19 writing?

20 MS. SMITH: I believe he is -- his testimony is  
21 written.

22 HEARING OFFICER RENAUD: Written testimony. All  
23 right.

24 MS. SMITH: Correct.

25 HEARING OFFICER RENAUD: And do you have any

1 other -- any live witnesses you intend to -- to offer today?

2 MS. SMITH: We do. We have Mr. Powers present.

3 HEARING OFFICER RENAUD: All right. And he's  
4 under the topic of alternatives?

5 MS. SMITH: Exactly.

6 HEARING OFFICER RENAUD: All right.

7 MS. SMITH: Yes.

8 HEARING OFFICER RENAUD: Very good. All right.  
9 Have you been able to contact Mr. Sarvey, by the way?

10 MR. BELL: I have not gotten a hold of him yet.

11 HEARING OFFICER RENAUD: All right. Okay. Let us  
12 know if you do.

13 MS. SMITH: Okay. I definitely will.

14 HEARING OFFICER RENAUD: All right. Okay. Well,  
15 oh, the CCA. Sorry. You're down at the bottom of my list  
16 so I --

17 MR. WILLIAMS: I'm not offended.

18 HEARING OFFICER RENAUD: -- was overlooking --

19 MR. WILLIAMS: We have no witnesses today.

20 HEARING OFFICER RENAUD: All right. Very good.

21 I guess I'm thinking that this might -- maybe we ought to  
22 do -- let you guys have your voice conference, your voice  
23 discussion now. I think that will give us a better idea of  
24 where we stand.

25 MR. BELL: That's a good idea.

1 HEARING OFFICER RENAUD: All right.

2 MR. BELL: The county is planning on calling in  
3 very soon, if they're not already on the line.

4 MR. RAMAIYA: Yeah. Jarrett and Emmet Aquino are  
5 on the line for the county.

6 HEARING OFFICER RENAUD: Okay. And -- and what  
7 is -- what is that in regard to? Is that regarding the  
8 noise issue?

9 MR. BELL: Noise, yes.

10 HEARING OFFICER RENAUD: All right. Okay. Well,  
11 I think that's -- that's the thing to do then is to -- we'll  
12 take a break. How long do you think you might need? Thirty  
13 minutes?

14 MR. BELL: Fifteen minutes.

15 HEARING OFFICER RENAUD: All right. Very good.  
16 We'll consider this a continuation of the workshop that was  
17 started this morning. It is open to the public. And that  
18 the -- the committee will not be present.

19 MR. BELL: Thank you.

20 HEARING OFFICER RENAUD: All right. Thank you.

21 (Off the Record from 3:02 p.m., Until 3:26 p.m.)

22 HEARING OFFICER RENAUD: I understand you've  
23 concluded your discussions. Who would like to summarize for  
24 us what happened?

25 MR. BELL: I can do that for you.

1 HEARING OFFICER RENAUD: Thank you, Mr. Bell.

2 MR. BELL: We discussed several aspects of Noise-  
3 4, which is the condition of certification that is in  
4 dispute. Staff notes that much of what has been discussed  
5 seems -- seems reasonable. However, with the county's  
6 interpretation of its own ordinances with respect to what  
7 level -- what noise level to apply at a property line  
8 between two different use within the same zone, Staff will  
9 be supporting the county's interpretation of this ordinance  
10 that is at issue.

11 As you know, the commission and staff give great  
12 deference to local jurisdictions in interpreting their own  
13 statutes. And while there may be some ambiguity here and  
14 there's nothing within the ordinance itself that's directly  
15 on point, the county does have a history of interpreting its  
16 ordinances in this respect and -- and Staff will support  
17 that.

18 Specifically, in Noise-4 there is one section that  
19 Staff does agree with, and that is in the first paragraph of  
20 Noise-4 there's discussion of the average decibel level at  
21 monitoring at locations LT-1 and LT-2. And Staff agrees  
22 with proposed changes from the applicant. But as to the  
23 overall decibel level that's not to be exceeded of 75  
24 proposed by the applicant, Staff agrees with the county's  
25 interpretation and will support that of 62.5 decibels.

1 HEARING OFFICER RENAUD: All right. Applicant,  
2 anything you wish to add to that?

3 MS. FOSTER: Applicant would just like to state  
4 that county staff made it clear there's nothing in writing  
5 that leads them to interpret their LORS this way. This is  
6 just the way that they do it right now. They said that the  
7 LORS ordinance changed in 2009. And they acknowledge that  
8 the averaging does apply to two different zones and that  
9 this -- these two parcels are located within the same zone,  
10 but they are applying it to this situation.

11 HEARING OFFICER RENAUD: Okay. I understand there  
12 is a county representative on the phone. Am I correct about  
13 that?

14 MR. AQUINO: Correct.

15 HEARING OFFICER RENAUD: All right. I think it  
16 would be helpful to the committee, frankly, if -- if the  
17 parties are prepared to do this to -- to kind of put on a  
18 evidentiary presentation on this issue. Do you -- do you  
19 have witnesses ready that you could do that for us?

20 MS. FOSTER: Yes, we do.

21 HEARING OFFICER RENAUD: And then the  
22 commissioners can listen and perhaps ask questions and try  
23 and clear up anything that -- that they still don't get.

24 And so why don't you proceed then, Applicant,  
25 please.

1 MR. BELL: If -- if I may --

2 HEARING OFFICER RENAUD: Yes.

3 MR. BELL: -- would it help the committee if we  
4 did this by way of panel?

5 HEARING OFFICER RENAUD: It wouldn't hurt, if --  
6 if that's okay with Applicant as well.

7 MS. FOSTER: That's fine with Applicant.

8 HEARING OFFICER RENAUD: Yeah. Sure. Okay. So  
9 any witnesses you're going to call should be sworn. Present  
10 in the room?

11 MS. FOSTER: Applicant would like to call Brian  
12 Mooney.

13 HEARING OFFICER RENAUD: All right. Any other --  
14 do you have any other witnesses?

15 MS. FOSTER: We had another noise witness.  
16 However he was to testify on the LT-1 and LT-2 issues. So I  
17 do not believe that he will be needed for this portion. But  
18 if he is we can swear him in later.

19 HEARING OFFICER RENAUD: Okay. And then will this  
20 be the panel presentation? Staff, do you have your -- is  
21 the county witness your witness, or do you have another one,  
22 as well?

23 MR. BELL: We do have another witness we'll be  
24 calling. Perhaps the county witness could identify  
25 themselves first or, I'm sorry, we'd be calling Shahab

1 Khoshmashrab.

2 HEARING OFFICER RENAUD: All right. And who is  
3 calling the county representative, if anybody? Is anybody  
4 calling him as witness or --

5 MR. BELL: We'll call him as a witness.

6 HEARING OFFICER RENAUD: All right. Fine. Well,  
7 okay, let's have all three of you raise your right hand.

8 (Whereupon Mr. Mooney, Mr. Khoshmashrab, and  
9 Mr. Aquino are sworn.)

10 HEARING OFFICER RENAUD: Gentleman on the  
11 telephone, state your name and I do.

12 MR. AQUINO: This is Emmet Aquino, County of San  
13 Diego, noise specialist. I do.

14 HEARING OFFICER RENAUD: Thank you. All right.  
15 Okay. Proceed.

16 DIRECT EXAMINATION

17 MS. FOSTER: Good afternoon, Mr. Mooney. Could  
18 you please state your full name and your qualifications and  
19 background for the record?

20 MR. MOONEY: Yes. My name is Brian Mooney.  
21 Office is at 427 C Street, San Diego, 92101. I'm an urban  
22 environmental planner. I have 35 years experience. I'm a  
23 member of the American Institute of Certified Planners.  
24 I've been practicing this in California, really since the  
25 early '70s. I'm also an adjunct professor of urban and

1 environmental planning at the New School of Architecture and  
2 Design. I'm a frequent lecture at American Planning  
3 Associations meetings. I'm considered a specialist in  
4 general plan law in the State of California. I've prepared  
5 numerous general plans, also zoning ordinances and  
6 implementing ordinances for resource management, for noise,  
7 etcetera.

8 MS. FOSTER: Thank you. Have you reviewed the  
9 relevant project documents in this proceeding, including the  
10 AFC, the FSA and the county land use plan?

11 MR. MOONEY: Yes.

12 MS. FOSTER: Thank you. What are your conclusions  
13 regarding the noise limits applicable to the PPEC project?

14 MR. MOONEY: My conclusion is based on reading  
15 the -- the ordinances that have been adopted by the County  
16 of San Diego Board of Supervisors. And in relation to  
17 implementing the general plan of the board of supervisors is  
18 that the appropriate noise levels at the property line would  
19 be 75 to 80 decibels, DBA, and that is specifically in  
20 relationship to the area being designated in a specific plan  
21 for heavy industrial use.

22 MS. FOSTER: Thank you. Have you reviewed the  
23 revised proposed condition Noise-4 that Applicant docketed  
24 on July 22nd, 2012?

25 MR. MOONEY: Yes, I have.

1 MS. FOSTER: And in your opinion does the 75 DBA  
2 property line limit as measured at the PPEC property line  
3 comply with San Diego County laws, ordinances, regulations  
4 and standards, otherwise known as LORS?

5 MR. MOONEY: Yes, I do.

6 MS. FOSTER: Thank you. In your opinion do you  
7 believe that the PPEC project and the proposed detention  
8 facility could both coexist in their proposed locations?

9 MR. MOONEY: I do. And I visited the site  
10 specifically to look at that in relationship, and also the  
11 noise levels. And, again, focusing on the fact that I'm a  
12 land use planner and I'm looking at the orientation of  
13 various land uses, the relationship of those land uses. But  
14 also understanding I have to look at the general plan of  
15 what you're trying to achieve there and the occupants. And  
16 based on what I've seen, yes, they could both occupy with  
17 the uses that are proposed with the conditions that  
18 basically were put forth, both for the Pio Pico Energy  
19 Center, and then also for the correction facility.

20 MS. FOSTER: Thank you. You stated previously  
21 that the area has a heavy industrial land use designation.  
22 What zone is the area zone?

23 MR. MOONEY: S88.

24 MS. FOSTER: And what is the difference between  
25 your interpretation and Staff's interpretation related to

1 the noise limits applicable to PPEC?

2 MR. MOONEY: Well, and first of all, let me start  
3 with the fact that Staff recognized that their  
4 interpretation is the new interpretation generated from  
5 2009, and specifically it appears to be associated with the  
6 noise ordinance only. And my focus is ultimately always  
7 looking at the general plan, which understand California  
8 Planning Law is really where we start looking at language as  
9 appropriate land use as appropriate land uses, and then the  
10 conditions associated with those land uses.

11 In this particular case, it was actually 1994, the  
12 East Otay Mesa Specific Plan was adopted. And I've  
13 participated in a number of the issues associated with this  
14 in the County of San Diego. It was adopted because we  
15 wanted to find an area where we could have heavy industrial  
16 land uses, specifically also looking at the opportunity to  
17 work close to the border with Mexico and truck traffic and  
18 things of that nature.

19 So consequently you have the general plan. Then  
20 you have a sub-regional plan which -- specifically, which is  
21 part of the general plan, focusing on identifying an area  
22 where you can have, in essence, heavy impacts, heavy  
23 industrial uses in a location. Then you require the  
24 preparation of a specific plan, implemented by an S88 zone.  
25 That S88 zone is then interpreted regularly through the M56

1 or M58, which is consistent with the heavy industrial land  
2 use designation.

3           Where I differ with Staff -- and I think that  
4 ultimately something happened in 2009 -- if you take Staff's  
5 interpretation you'd find that your ordinances are no longer  
6 in conformance with the general plan, or the general plans  
7 goals and objectives, to ultimately create this heavy  
8 industrial area which ultimately will allow a lot of noises,  
9 even when these uses basically can coexist, as we've seen  
10 ultimately, as I've testified and a number of other people  
11 have agreed.

12           The other thing I don't they've looked at  
13 comprehensively, this, actually, the project is located in a  
14 heavy industrial area. There's 290 acres. Actually, this  
15 particular project, the PPEC, would affect only ten percent  
16 of the water of the correctional facility. There already is  
17 an existing power plant to the immediate south of this which  
18 affects already approximately 80 to 90 percent of that  
19 water. So you're going into an area where you've already  
20 established a higher noise level. In essence, their  
21 interpretation would create similar to spot zoning in  
22 interpretation of saying, here's where I want to reduce that  
23 noise. If you had that continuing you ultimately would  
24 never be able to achieve the goals and objectives of the  
25 County of San Diego to have a heavy industrial area.

1 MS. FOSTER: Is it true that both the proposed  
2 location of the detention facility, as well as the PPEC site  
3 have both the same zone and the same use designation?

4 MR. MOONEY: Yes. Well, and the zone is S88. S88  
5 is really controlled under a specific plan by that land use  
6 designation, which is heavy industrial. They also have a  
7 type. And this gets back to the very uniqueness of the San  
8 Diego Zoning Ordinance, which is different than most zoning  
9 ordinances when it was originally prepared by Sedway Cooke  
10 (phonetic) in the late '70s and the early '80s, and I'm very  
11 familiar with the approach they took. They wanted them  
12 type. So when we talk about a type of use they created  
13 specific type. And really it was to identify a series of  
14 uses that just -- they needed somewhere, but they basically  
15 had to then find ways to put them.

16 For instance, you'll see that basically the  
17 correctional facility is a civic type. You'll also see that  
18 the power plant is a specific type. An airport is a civic  
19 type. And in essence it appears that the staff is using  
20 that type as really a redefinition of zone, which is not  
21 correct in relationship to a strict reading of their, you  
22 know, local ordinances and regulations and, of course, as  
23 they try to implement the general plan.

24 MS. FOSTER: Are you familiar with the language in  
25 Noise Ordinance Section 36.404 Subsection E?

1 MR. MOONEY: I am.

2 MS. FOSTER: Can you read the relevant language in  
3 that section for the record?

4 MR. MOONEY: "The sound level limit at a location  
5 on a boundary between two zones is the arithmetic mean of  
6 the respective limits for the two zones. And that's a key  
7 area where the misinterpretation comes in, because you only  
8 have one zone, that's S88. And then you had an implementing  
9 implement, which is the heavy industrial. And that's how it  
10 should be interpreted, which basically means the sound  
11 levels or the noise levels at the property boundary are  
12 defined by the heavy industrial zone of M54, M56, M58.

13 MS. FOSTER: Thank you. Do you have any  
14 summarizing statements to make about your testimony?

15 MR. MOONEY: I think most importantly is, is that  
16 ultimately, if you take the county's interpretation you  
17 really wouldn't be able to implement the county's vision,  
18 goals and objectives of the general plan, which is to create  
19 an area for heavy industry.

20 The other thing is you -- you take this  
21 interpretation and you're -- you're almost leaving out the  
22 practicality of how we have to do land use planning. We  
23 already have a power plant there, which is a much larger  
24 power plant, which generates noise in and of itself as a  
25 higher level. I believe it's a 70 DBA when it was approved.

1           So you have to look at land use issues in the  
2 context of the whole, and not in relationship, which Staff  
3 is doing, a simple ordinance, a noise ordinance by itself,  
4 which more than likely their interpretation came up because  
5 there was some problem or issue.

6           MS. FOSTER: Thank you very much.

7           MR. MOONEY: My pleasure.

8           PRESIDING MEMBER PETERMAN: Thank you for that  
9 testimony. Could you repeat the part of your testimony that  
10 talked about the two different zones and the arithmetic  
11 mean? And I wanted to make sure I understood what you were  
12 saying there.

13           MR. MOONEY: Yes. This is actually the Government  
14 Code Section 36.404, and this is where their interpretation  
15 is coming, frankly, Subsection E, Table 36.404, Sound Level  
16 Limits in Decibels. And they're going to Section E that  
17 says, "The sound level limit at a location on a boundary  
18 between two zones is arithmetic mean of the respective  
19 limits for the two zones," which is why they then are  
20 saying -- and the civic use is a lower noise level, and this  
21 higher 75, we're going to -- we're going to do an arithmetic  
22 formula and we're going to come up with the 62.5.

23           By the way, the other thing that's important to  
24 note is that 62.5 is more of a residential zone, a  
25 residential noise level that you would see. So it doesn't

1 make sense to put this one piece of property in this 298  
2 acres, 298 acre area in this lower residential noise level.

3 PRESIDING MEMBER PETERMAN: Just to follow up, I  
4 thought that you had a statement after you discussed that to  
5 say that, in fact, this should be considered one zone --

6 MR. MOONEY: That's correct.

7 PRESIDING MEMBER PETERMAN: -- and not two. Can  
8 you repeat that statement?

9 MR. MOONEY: Well, it is one zone, S88. It is one  
10 zone and should be implemented through the heavy industrial  
11 land use designation which implements the S88 zone.

12 PRESIDING MEMBER PETERMAN: Thank you.

13 HEARING OFFICER RENAUD: Okay. Is there cross-  
14 examination?

15 MR. BELL: I have no questions on cross.

16 HEARING OFFICER RENAUD: All right. Cross-  
17 examination by Simpson, Ms. Smith?

18 MS. SMITH: We have none at this time.

19 HEARING OFFICER RENAUD: All right. CCA?

20 MR. WILLIAMS: No cross-examination. Thank you.

21 HEARING OFFICER RENAUD: All right. Stay there  
22 for moment. Is the -- I -- is -- excuse me. Is the  
23 correctional facility considered the same type as the power  
24 plant?

25 MR. MOONEY: Yes.

1 HEARING OFFICER RENAUD: And then what type is  
2 civic, civic use?

3 MR. MOONEY: It's actually -- it's civic  
4 classification. Again, the way the county zoning  
5 ordinance -- and the county zoning ordinance is very  
6 complicated, trying to take into a wide range of parameters.  
7 And so they went with land use designation, zoning  
8 designation, and then they offer a series of different types  
9 and uses within that, trying to find compatibility. But  
10 that specific type doesn't change the zone itself.

11 HEARING OFFICER RENAUD: Which is S88, which is  
12 the heavy industrial?

13 MR. MOONEY: Correct.

14 HEARING OFFICER RENAUD: Are there subtypes within  
15 civic? I'm trying to get my mind around how something  
16 that's where people live and something that's an industrial  
17 project can both be civic uses.

18 MR. MOONEY: Well, the concept of civic use really  
19 was oriented towards -- and let's use the example of the  
20 airport, the school, the correction facility, these are all  
21 uses that we as a society need somewhere. And so in essence  
22 they're saying, well, the major issue is we're going to find  
23 a place to put you. But then you have to ultimately add the  
24 mitigating factors to make it fit within that category.  
25 Again, obviously, not a lot of people or not a lot of

1 locations want a correctional facility in your area.

2           So the heavy industrial, and plus the fact that  
3 you've already located two correctional facilities in the  
4 Otay -- East Otay Mesa, this seems a logical area. And it  
5 does fit, but it's really more of a collective fit of uses  
6 that society needs, and that's why we're calling it civic.  
7 But it's not a civic land use as in siting a city hall, a  
8 police station, a fire station. It's really a type that  
9 they're saying, look, we need to find places to site these.

10           HEARING OFFICER RENAUD: Are you saying it would  
11 fit because the noise wouldn't be a problem, or is it  
12 because the correctional facility shouldn't be placed in --  
13 in, say, a residential neighborhood?

14           MR. MOONEY: Well, it fits, first of all, because  
15 the -- the implementing elements of the zoning ordinance  
16 allow it to fit, so -- and it's the major impact of utility  
17 and services. So they -- ultimately these -- all these  
18 categories allow it to fit. And, yes, we're trying to find  
19 locations. But heavy industrial designation is one of those  
20 areas where we fit.

21           You have to then go on to add, can you create any  
22 impacts that might be existing in that area, and the answer  
23 in this particular case is, yes. You know, the -- when you  
24 take a look at the physical aspects of the site for the  
25 correctional facility, it's set above both the proposed

1 project and the adjacent Calpine Plant. You have -- of  
2 course, a correctional facility usually has some walls or  
3 some form of relationship to that. So there are ways you  
4 can fully mitigate of -- or any impacts to the population of  
5 the correctional facility.

6 HEARING OFFICER RENAUD: Okay. Thanks.

7 Does anybody have any more questions for Mr.  
8 Mooney?

9 Applicant, I take it you would like Mr. Mooney to  
10 be admitted as an expert witness?

11 MS. FOSTER: That is correct.

12 HEARING OFFICER RENAUD: Is there any objection to  
13 Mr. Mooney's admission as an expert witness?

14 MR. BELL: No.

15 HEARING OFFICER RENAUD: Simpson, objection?

16 MS. SMITH: Not at this time.

17 HEARING OFFICER RENAUD: All right. CCA?

18 MR. WILLIAMS: No.

19 HEARING OFFICER RENAUD: All right. You'll be  
20 admitted as an expert. Thank you.

21 Another witness, Applicant?

22 MS. FOSTER: Mr. Mooney was our only witness  
23 related to the issues with the detention facility and the  
24 noise limit.

25 HEARING OFFICER RENAUD: All right. Fine. Then

1 let's go to staff.

2 MR. BELL: Thank you. Staff just has a couple  
3 questions for Emmet Aquino from County of San Diego.

4 Emmet, are you still on the line?

5 MR. AQUINO: Yes, we're still on the line.

6 DIRECT EXAMINATION

7 MR. BELL: Okay. Are you familiar with these two  
8 proposed facilities, both the Pio Pico Energy Center and  
9 CCA's facility?

10 MR. AQUINO: Generally, yeah.

11 MR. BELL: Okay. Do you know, what -- what is the  
12 type of use that Pio Pico is considered by the county?

13 MR. AQUINO: Right now it appears that the  
14 proposed power plant, from my understanding, that particular  
15 use would fall under the title of what we would call or  
16 communicate as major impact services and utilities.

17 MR. BELL: Okay. And what type of use is the  
18 correctional facility considered?

19 MR. AQUINO: Well, the correctional facility I  
20 believe falls under the same major impact services and  
21 utilities.

22 MR. BELL: Okay. We had -- we just heard  
23 testimony from an expert witness on behalf of the applicant  
24 that characterized the uses of both of these facilities to  
25 be civic. Does that comport with the county's

1 interpretation?

2 MR. AQUINO: Well, if I may ask for clarification  
3 I'll --

4 MR. RAMAIYA: I mean, this is Jarrett with the  
5 county. We agree with Mr. Mooney's testimony. Those do  
6 fall under the civic use title. I think what we're trying  
7 to clarify this for is that there was further subsection  
8 under that. But we agree that those are civic use types.

9 HEARING OFFICER RENAUD: I think for the record we  
10 better understand who's speaking now.

11 MR. BELL: I know Emmet is speaking. But could  
12 the other witness identify himself.

13 MR. RAMAIYA: Oh. If I -- if I may interject  
14 quickly, Staff would have liked to have seen information as  
15 far as what the proposed power plant and what use it would  
16 fall under. Right now we're still looking into our zones as  
17 far as where this power plant would fall under. But as far  
18 as the CCA with the correctional facility use to the north,  
19 that has been identified as a civic use for the -- for the  
20 proposed project itself being the power plant. That use  
21 is -- is still being researched at this time.

22 MR. BELL: And that was -- you actually got ahead  
23 of me there, because my question was going to be the  
24 subsections under which --

25 HEARING OFFICER RENAUD: Let's -- let's not do

1 that before we find out who speak previously.

2 MR. AQUINO: Yes. Again, when it comes to the  
3 subsections --

4 HEARING OFFICER RENAUD: No. No. Sir --

5 MR. AQUINO: -- that would come down --

6 HEARING OFFICER RENAUD: -- please -- please --

7 MR. AQUINO: -- to like what the property --

8 HEARING OFFICER RENAUD: -- please stop. Please  
9 stop.

10 MR. AQUINO: -- is being made use of.

11 MR. BELL: Mr. Aquino, hold on just a second.

12 MR. AQUINO: Oh.

13 MR. BELL: We had your associate there talk as  
14 well. We just need to get him identified for the record  
15 please.

16 MR. RAMAIYA: Oh, I sincerely apologize about  
17 that. I'm Jarrett Ramaiya, a planning manager. I work with  
18 Emmet here in the county.

19 HEARING OFFICER RENAUD: J-a-r-e-t?

20 MR. RAMAIYA: Oh, I'm sorry. Yeah. My name is  
21 Jarrett, it's J-a-r-r-e-t-t, and my last name is Ramaiya,  
22 R-a-m-a-i-y-a.

23 HEARING OFFICER RENAUD: All right. Thank you.  
24 Okay.

25 Proceed, Mr. Bell.

1           MR. BELL: Under your interpretation of your  
2 ordinances under a type of use, have you determined what --  
3 what the use for the power plant would be at?

4           MR. AQUINO: If -- if the power plant falls under  
5 the industrial use as referenced within Subsection E and  
6 Section 36.404, then the property line sound level would be  
7 subject to the 70 decibels as indicated in Subsection 5.

8           The moment we have a neighboring use that is a  
9 specific use then we will, in practice, take the average of  
10 the two different uses and utilize the average arithmetic  
11 mean of the two sound level in the environment.

12          MR. BELL: Has the county yet made the  
13 determination that these are two different uses?

14          MR. AQUINO: Right now we have anticipated the use  
15 for the CCA, which is the correctional facility. That  
16 under -- our understanding that that is specific use. As  
17 far as the use for the power plant, that's something else.

18          MR. BELL: Okay. So with the county -- the input  
19 that the county is giving is that if the power plant is  
20 considered to be a different type of use than the  
21 correctional facility, then the county would apply the  
22 arithmetic mean to determine the decibel level at the  
23 property line; is that correct?

24          MR. AQUINO: That's correct. We'd apply the  
25 sections within our noise ordinance, Subsection E. Although

1 it does state the limits for two zoning districts as  
2 mentioned by Mr. Mooney, it's Staff's interpretation to take  
3 the average of the two different uses.

4 MR. BELL: Okay. In Section 36.404(e) does that  
5 section refer to the different zones or the different uses?

6 MR. AQUINO: Right now the way that the old  
7 ordinance is written it references two zones are different  
8 zones. If I may include additional information --

9 MR. BELL: That -- that's --

10 MR. AQUINO: -- zoning -- I'm sorry.

11 MR. BELL: That was going to be --

12 MR. AQUINO: The zoning ordinance --

13 MR. BELL: My next question was going to be, what  
14 additional information would the county staff apply in  
15 determining what a type of use is?

16 MR. AQUINO: We would utilize the definitions as  
17 set by the zoning ordinance.

18 MR. BELL: So in proposing the use of the  
19 arithmetic mean, are you only using Section 36.404(e), or  
20 are you looking at your zoning ordinances as a whole?

21 MR. AQUINO: We would be applying Subsection E as  
22 it relates, as well, to Subsection C, C in reference to the  
23 S88 requirements regarding the sound level in there.

24 MR. BELL: Is this the practice of the county  
25 to -- to interpret this type of issue in this manner?

1           MR. AQUINO: That's correct. Effective 2009, when  
2 the old ordinance was revised the was interpreted, and I've  
3 done this in practice, utilizing the average of the two  
4 different uses.

5           MR. BELL: I have no further questions.

6           HEARING OFFICER RENAUD: Okay. Thank you.

7           PRESIDING MEMBER PETERMAN: I have --

8           HEARING OFFICER RENAUD: Commissioner Peterman,  
9 questions?

10          PRESIDING MEMBER PETERMAN: Yeah. I just wanted  
11 to clarify that testimony and make sure I completely  
12 understood that since 2009 the county has for two projects  
13 within one zone with two different uses used the arithmetic  
14 average. Did I understand that correctly?

15          MR. AQUINO: Prior to 2009 the noise ordinance  
16 identified the S88 zones to be subject to two hard line  
17 sound level emits which was 45 and 50. Effective 2009, for  
18 clarity purposes the S88 has been more detailed and  
19 described and is subject to the sound level, and it's based  
20 on what the property is being made use of. So prior to 2009  
21 it was interpreted to use the hard line number of 45 and 50.

22          PRESIDING MEMBER PETERMAN: And do you have a  
23 sense of how many projects since then you have used this  
24 interpretation for?

25          MR. AQUINO: Projects subsequent to the year 2009

1 when the noise ordinance was affected is not when the county  
2 implemented this practice.

3 PRESIDING MEMBER PETERMAN: Actually, I have -- I  
4 think that's a question back at me. I'm just trying to get  
5 on there that you raised the point that this has become a  
6 practice of the county since 2009. I wanted to get a sense  
7 of how frequently you've had to invoke this interpretation.

8 MR. AQUINO: Well, I don't have formal numbers in  
9 front of me. But as far as projects that Staff has reviewed  
10 in regards to noise since 2009, roughly 12, that being an  
11 approximate number. Again, I don't have the numbers in  
12 front of me. But 12 would just be an estimate on my part.

13 PRESIDING MEMBER PETERMAN: Thank you. I don't  
14 have any questions.

15 Commissioner Douglas?

16 ASSOCIATE MEMBER DOUGLAS: No.

17 MS. FOSTER: Applicant has some questions for the  
18 county, if that's okay.

19 HEARING OFFICER RENAUD: Yes. Please.

20 Are you done Mr. Bell?

21 MR. BELL: Yes.

22 HEARING OFFICER RENAUD: All right. There's  
23 another attorney here, Mr. Aquino, who has some questions  
24 for you.

25 Go ahead.

## CROSS-EXAMINATION

MS. FOSTER: Hi, Mr. Aquino. I have a few follow-up questions.

Isn't it true that the Otay Sub-Regional Plan, as well as the East Otay Mesa Specific Plan dictate that heavy industrial uses within the specific plan area shall appear to be M56 use regulations?

MR. AQUINO: The East Otay Mesa Specific Plan, to my understanding, does -- does reference the zoning ordinance, which indicates performance standards which relates to noise levels.

MS. FOSTER: And are -- do you know what those noise levels are that the specific plan refers to?

MR. AQUINO: WE don't -- well, the county does not look at that section in practice ever since the noise ordinance was updated back in 2009. The reason why the noise ordinance was updated in 2009 was to avoid any confusion as far as interpretation of what the sound levels were intended for the S88 zone. We have requirements within our zoning ordinance which is referenced within the East Otay Mesa Specific Plan. We have sound level requirements within our noise ordinance in which we had multiple requirements for different zones.

So the revisions in those ordinances was to address that concern, and which why Subsection C was revised

1 and updated in the noise ordinance before you there.

2 MS. FOSTER: You testified earlier that if there  
3 was a different use then you would average, even though the  
4 language of 36.404(e) says you would only average if there  
5 were two different zone. Isn't it true that both the Pio  
6 Pico Project and the detention facility are in the same zone  
7 with the same heavy industrial land use designation and are  
8 the same use type of major impact services and utilities,  
9 which is a subset of a civic use type?

10 MR. AQUINO: I agree that it is under the same  
11 zone. As far as interpretation for which category it would  
12 fall under, under Subsection C, that could be discussed  
13 and -- and questioned. Whether the power plant falls under  
14 a specific use, I don't have that information. But if the  
15 power plant does fall under this industrial use type as  
16 defined in our noise ordinance, then we would apply the --  
17 the average of the -- of the two.

18 MS. FOSTER: I'm finished here.

19 HEARING OFFICER RENAUD: Okay. This is Mr.  
20 Renaud. Is there a planned time when the county might make  
21 that determination as to what type the power plant is?

22 MR. AQUINO: As far as a planned time, Staff can  
23 do further research and look into that. With the current  
24 information available it's our understanding that the  
25 correctional facility does fall under the civic use. So

1 it's my understanding, without doing detailed research on  
2 the project, that the power plant may fall under this  
3 industrial use type, which is only uses -- only uses  
4 allowable within the M50, M52 or M54 zones. If that's the  
5 case then in practice the county has applied the -- the  
6 averaging to retain the intent of the noise ordinance.  
7 Currently the noise ordinance does state the two different  
8 zones, and they can be averaged with the two different  
9 zones.

10           However, ultimately the only situation in which we  
11 would apply one hard line number would be primarily for  
12 extractive industries. Subsequent language in Subsection E  
13 does state that. And based on that language where a hard  
14 line number for extractive industries being the only  
15 exception, the county has interpreted on those ordinances to  
16 retain the averaging of the different zones and/or different  
17 uses being made of the property within the S88 zone.

18           HEARING OFFICER RENAUD: All right. Thank you.  
19 Does anyone have further questions for Mr. Aquino?

20           MR. BELL: No, on behalf of Staff.

21           HEARING OFFICER RENAUD: All right. CCA?

22           MS. SMITH: None at this time.

23           HEARING OFFICER RENAUD: Okay. Thank you. Thank  
24 you.

25           MS. FOSTER: Applicant just has one follow-up

1 question to clarify.

2 HEARING OFFICER RENAUD: Yes.

3 MS. FOSTER: Can you confirm that both projects  
4 are located within the same zone?

5 MR. AQUINO: Yes. Both projects are located  
6 within the S88 zone.

7 MS. FOSTER: And can you confirm that the language  
8 of 36.404(e) only applies when there are two different  
9 zones?

10 MR. AQUINO: Staff's interpretation of Subsection  
11 E is to -- is to incorporate the averaging of the two zones,  
12 along with the different uses being made of the property if  
13 zoned as S88.

14 MS. FOSTER: I have no further question.

15 PRESIDING MEMBER PETERMAN: I have a different  
16 follow-up question. Hello. This is Commissioner Peterman.  
17 Just one more follow-up question.

18 How many different types of uses can a facility  
19 have within this type of zone? I'm just trying to get a  
20 sense of what you may -- what your options are in terms of  
21 coming back eventually with a designation about this power  
22 plant.

23 MR. AQUINO: My apologies. Was that question  
24 referred to us? And if so could you please repeat that?

25 PRESIDING MEMBER PETERMAN: Sure. You mentioned

1 in your testimony that the detention center has already been  
2 assigned a use type under civic, and that that designation  
3 has not yet been made for this proposed project. And so I  
4 was wanting -- I want to get a sense of how many different  
5 types of sub uses could there be to civic?

6 MR. AQUINO: If you could kindly provide us some  
7 time, we'll look up specific uses within that zoning  
8 information and provide that information to you.

9 PRESIDING MEMBER PETERMAN: I don't -- it's not  
10 really necessary. I was just -- it's not that -- you don't  
11 have to do research. I was just trying to get a sense of  
12 the possibility of you coming back with a different type of  
13 use than it is for the power plan than the detention center.  
14 But since your decision has not been made we'll wait until  
15 you make that decision.

16 MR. AQUINO: Okay. And for clarity, there's  
17 approximately about 19 different use types under specific  
18 use type section within our zoning ordinance.

19 PRESIDING MEMBER PETERMAN: Okay. Great. Thank  
20 you. That -- asked and answered.

21 HEARING OFFICER RENAUD: Okay. Any more  
22 questions? Is that it? Okay.

23 Thank you, Mr. Aquino and Mr. Ramaiya. Okay.

24 Staff, another witness?

25 MR. BELL: We're not calling any more witnesses.

1 That's all we have.

2 HEARING OFFICER RENAUD: All right. Well, I  
3 see -- I see Shahab here.

4 MR. BELL: Yes.

5 HEARING OFFICER RENAUD: And I have a question for  
6 him.

7 MR. BELL: Okay. We'll call Shahab.

8 HEARING OFFICER RENAUD: So you call Shahab.  
9 Okay. Thank you.

10 First, we'll stipulate -- can everyone stipulate  
11 that Mr. Khoshmashrab is -- is an expert in the noise area?

12 MR. BELL: Yes.

13 MS. FOSTER: Yes.

14 MR. BELL: So stipulated.

15 MR. WILLIAMS: Yes.

16 HEARING OFFICER RENAUD: Ms. Smith?

17 MS. SMITH: Yes.

18 HEARING OFFICER RENAUD: Thank you. Okay. We've  
19 heard testimony about and -- and commentary about the  
20 arithmetic mean which would be applied in the event, as I  
21 understand it, that the correctional facility is a specific  
22 use, but the power plant is another kind of use, if I've got  
23 that straight. What would that number be?

24 MR. KHOSHMAHRAB: The power plant is an  
25 industrial --

1 HEARING OFFICER RENAUD: Turn on your mike. Use  
2 the screen there in the lower right corner.

3 MR. KHOSHMAHRAB: If the power plant is -- is an  
4 industrial use, I believe it's -- it -- the power plant's  
5 limit at the property line, 88's property line should be 75.  
6 And if it's true that the correctional facility remains as a  
7 civic use, then according to my interpretation the 50  
8 decibel limit at the property line of -- of the line between  
9 the two property lines, it will be 50 decibels during the  
10 day and 45 decibels at night.

11 HEARING OFFICER RENAUD: And then we take the  
12 arithmetic means --

13 MR. KHOSHMAHRAB: And then you take the  
14 arithmetic means of the two respective ones. So you take  
15 the 75 and the 45, you get 62.5 -- no, you get --

16 HEARING OFFICER RENAUD: The 60.

17 MR. KHOSHMAHRAB: -- 60-and-a-half.

18 HEARING OFFICER RENAUD: Yeah.

19 MR. KHOSHMAHRAB: And then if you take the 75 and  
20 the 50 you get 62-and-a-half. The 60-and-a-half applies to  
21 nighttime, 62-and-a-half applies to daytime.

22 HEARING OFFICER RENAUD: All right.

23 MR. KHOSHMAHRAB: And that would be at the -- at  
24 the -- at the -- I believe it's a line -- it's a property  
25 line of the receiver or a line between the two property

1 lines. I'm not quite sure how that is worded, but I can  
2 look it up.

3 HEARING OFFICER RENAUD: Thank you. That's all  
4 the questions I have. Does anyone else wish to ask  
5 Mr. Khoshmashrab a question?

6 CROSS-EXAMINATION

7 MS. FOSTER: I have a similar question for you  
8 that I had for the county. Are the properties located  
9 within the same zone?

10 MR. KHOSHMAHRAB: You're asking me?

11 MS. FOSTER: Yes.

12 MR. KHOSHMAHRAB: Are the properties within the  
13 same zone? They are S88.

14 MS. FOSTER: And they have the same --

15 MR. KHOSHMAHRAB: So that's the same --

16 MS. FOSTER: -- heavy industrial --

17 MR. KHOSHMAHRAB: -- zoning. According to my  
18 understanding the Pio Pico was supposed to be an industrial  
19 use. And the CCA is a civic use. So you have two different  
20 uses. So that's why the average of 75 was applicable to  
21 averaging the 75 from power plant -- power plant -- Pio Pico  
22 Power Plant was applicable in this case.

23 MS. FOSTER: Isn't it true that the specific plan  
24 designates both parcels as a heavy industrial use  
25 designation?

1 MR. KHOSHMAHRAB: I'm sorry. Say that again?

2 MS. FOSTER: Isn't it true that the specific plan  
3 for the area that both properties are located in designates  
4 the properties for heavy industrial use, as a heavy  
5 industrial use designation?

6 MR. KHOSHMAHRAB: I don't -- I don't recall that.

7 MS. FOSTER: I have no further questions.

8 HEARING OFFICER RENAUD: Anything else? All  
9 right.

10 Mr. Koshmashrab, in your testimony you indicate  
11 that there are -- and I'm reading from this, there -- it's  
12 page 4.6-9,

13 "There are feasible, commercially available mitigation  
14 measures to incorporate into the current design of PPEC  
15 in order for the project to comply with the above LORS  
16 requirements," and those requirements are the noise  
17 levels you're referring to.

18 Do you have any information regarding -- any more  
19 specific information regarding the feasibility of those  
20 measures and their cost?

21 MR. KHOSHMAHRAB: I don't have any information on  
22 cost.

23 HEARING OFFICER RENAUD: Oh.

24 MR. KHOSHMAHRAB: Feasibility, typically it's  
25 best to come with mitigation measures once the project is in

1 final design. And sometimes it's even a better idea to wait  
2 until the project becomes operational to explore what  
3 measures would best work to mitigate the noise.

4 HEARING OFFICER RENAUD: Thank you. Any more  
5 questions? All right.

6 MR. KHOSHMAHRAB: Thank you.

7 HEARING OFFICER RENAUD: You know, I think we  
8 should do a formality that I forgot to do at the outset, and  
9 that is to swear you. No, we did. We did all three.

10 ASSOCIATE MEMBER DOUGLAS: You swore him in. It's  
11 fine.

12 MR. BELL: We did.

13 HEARING OFFICER RENAUD: We did all three

14 MR. BELL: Yes.

15 HEARING OFFICER RENAUD: We did a mass swearing,  
16 so never mind. Okay. We're good. Thank you.

17 MR. KHOSHMAHRAB: You're welcome.

18 HEARING OFFICER RENAUD: Applicant, anything  
19 further on this issue?

20 MS. FOSTER: Nothing further on this issue.

21 HEARING OFFICER RENAUD: All right. At the  
22 prehearing conference one of us, and I think it might have  
23 been me, asked about the feasibility expert, Applicant, to  
24 provide -- or if you had any information regarding the  
25 feasibility of meeting the noise measures that are set forth

1 in the staff testimony. Is that something you could  
2 enlighten us on today?

3 MS. FOSTER: We have a technical noise modeling  
4 expert who is available today. As I indicated at the  
5 prehearing conference, we did have some concerns about the  
6 question because the way that Noise-4 was drafted, not just  
7 including the limit, it was not clear where those  
8 measurements will be occurring. And so Applicant also has  
9 concerns about that issue. So I'm not sure exactly how  
10 precise we can respond to that question. But we do have a  
11 technical expert available.

12 HEARING OFFICER RENAUD: Well, parties, maybe you  
13 can tell the committee, are you still in -- are you in  
14 disagreement over where the noise level measure -- measuring  
15 location?

16 MS. FOSTER: During the workshop we thought we had  
17 reached a resolution. And at -- towards the end of the  
18 workshop it came back that we had not reached a resolution  
19 with stuff. And so there's been no additional discussions  
20 related to the location, other than Applicant and CCA have a  
21 resolution, but Applicant does not accept.

22 HEARING OFFICER RENAUD: Okay. One moment.

23 (Colloquy Between Hearing Officer and Committee  
24 Members)

25 HEARING OFFICER RENAUD: If you're -- if you're

1 prepared to do so with this, the committee would very much  
2 like to hear about the feasibility of the noise measure,  
3 etcetera, proposed by Staff. Is that something you can do  
4 for us on -- on this short notice?

5 MS. FOSTER: Give me one -- give me on second.

6 HEARING OFFICER RENAUD: Sure.

7 MS. FOSTER: We need to discuss that.

8 (Colloquy Between Ms. Foster and Mr. Jenkins)

9 MS. FOSTER: Applicant's noise expert Michael  
10 Theriault is prepared to respond to your question. And I do  
11 not believe he's been sworn yet.

12 HEARING OFFICER RENAUD: Okay. Raise your right  
13 hand.

14 (Whereupon Mr. Theriault is sworn.)

15 HEARING OFFICER RENAUD: Thank you. Please state  
16 your name?

17 MR. THERIAULT: My name is Mike Theriault, and I  
18 am the president and principal consultant for Michael  
19 Theriault Acoustics. My business address is 66 Pennacook  
20 Circle, Wells, Maine 04090.

21 With respect to qualifications, I'm an electrical  
22 engineer by degree. I've spent my entire 26-year career in  
23 acoustics. I have direct work experience on more than 100  
24 combustion turbine energy centers. I've worked for the  
25 owners and developers of these projects. I've worked for

1 the architectural engineering firms that design them, the  
2 construction firms that build them. I've worked for the  
3 banks that finance, them for the municipalities that approve  
4 them. And I've testified throughout the country as an  
5 expert witness on noise from combustion turbine power  
6 projects.

7 HEARING OFFICER RENAUD: Thank you. Does anyone  
8 object to Mr. Theriault's admission as an expert?

9 MR. BELL: No objection on behalf of Staff.

10 MS. SMITH: No object here.

11 HEARING OFFICER RENAUD: Thank you. You're  
12 admitted as an expert witness. Thank you. Please go ahead.

13 MR. THERIAULT: In response to your question, sir,  
14 and in follow up to what Ms. Foster said, the noise standard  
15 set forth in the FSA was -- was a bit nebulous. So the  
16 exact point of compliance is at question.

17 But if we were to assume that the point of  
18 compliance was the EMDF property line, the receiving  
19 property line at the detention facility, then our analysis  
20 indicated that a significant amount of noise controls would  
21 be needed in order to comply with the proposed limit of 60  
22 DBA during nighttime hours. That limit and those controls  
23 would negatively impact capital costs for the project,  
24 performance profiles for the project, aesthetics, access,  
25 and maintenance, specifically we determined that a 40-foot

1 tall, nearly a 40-foot tall by the length of a football  
2 field noise wall would be needed in order to achieve the  
3 EMDF noise limit of 60 DBA during nighttime hours. In  
4 addition, we would need silencers placed in the outlets of  
5 the SCR units. Those effectively add back pressure to the  
6 machinery and reduce the performance profiles of the  
7 equipment.

8           Now, note that this analysis, these results don't  
9 include what we call design margin. Typically -- typically,  
10 if an applicant is going to guarantee that a particular  
11 noise level must be met, then it's prudent engineering to  
12 include more controls so that your model indicates you will  
13 be below that level. If we were to include a typical design  
14 margin of three decibels, the controls that I just outlined  
15 would become even larger. Either we'd have to consider  
16 larger acoustical barriers or additional SCR stack  
17 silencing, or worse, we might even have to consider  
18 enclosing portions of the power block itself, which for a  
19 simple cycle -- a simple-cycle configuration, a peaker  
20 facility, this is -- this is often what we've seen as a  
21 fatal flaw to projects. They simply -- they -- you do not  
22 see simple-cycle power projects in buildings. So the -- the  
23 meeting of this noise limit is a significant -- a  
24 significant burden to the project.

25           Now, I think it's worth saying something about

1 impacts as well. PPEC is licensed to operate 4,000 hours  
2 per year per unit. There's 8,760 hours in a year. During  
3 the initial years the project is projected not to operate  
4 more than 2,000 hours a year. That means 77 percent of the  
5 time PPEC will remain idle and largely produce no noise. Of  
6 the 22 percent of the time that it may run it will do so  
7 almost exclusively between 7:00 a.m. in the morning and  
8 10:00 p.m. at night. Nighttime operation of this facility  
9 will be extremely rare, and that is based on other operating  
10 facilities that the applicant has operating data for.

11 Finally, I'd like to note that in terms of impact  
12 we can -- we can view impact in terms of the community noise  
13 exposure level. This is a commonly used California metric,  
14 widely accepted. We have calculated what the community  
15 noise exposure levels would be, and they will be 63 decibels  
16 or less 99 percent of the time. This is well within the  
17 recommended exposure guidelines for land uses such as  
18 residential where multi-family residences, mixed use, as  
19 defined in the San Diego County noise element.

20 PRESIDING MEMBER PETERMAN: Is your statistic  
21 about 63 decibels more -- 99 percent of the time based on  
22 the -- the expected operation the first two years of 2,000  
23 hours, or is it based on what it would be proposed for, the  
24 4,000?

25 MR. THERIAULT: The 63 DB would be equating to a

1 7:00 a.m. to 10:00 p.m. -- 10:00 p.m. operating schedule.  
2 And -- and what's important to note is that even if the --  
3 even if the facility operated more hours per year, those  
4 would still be daytime hours. So it might -- it might  
5 ultimate -- the hours per year that the facility will  
6 operate may go up as the years go on, but those will still  
7 be daytime hours that it operates. For a;; practical  
8 purposes the facility does not operate during late evening  
9 and early morning hours when sensitivity to noise is the  
10 greatest.

11 PRESIDING MEMBER PETERMAN: So that's 99 percent  
12 of the time in one day?

13 MR. THERIAULT: Of the --

14 PRESIDING MEMBER PETERMAN: Is that how I should I  
15 read it?

16 MR. THERIAULT: Of the year. Ninety -- ninety-  
17 nine percent of the time -- ninety-nine percent of the time  
18 the noise exposure level caused by the operation of the  
19 plant will be less than the recommended exposure guidelines  
20 for a residential or multi-family residential use.

21 PRESIDING MEMBER PETERMAN: I have another follow-  
22 up question. So you provided information about what would  
23 be what -- what we'd need to make this feasible to reach the  
24 lower limit. What would be required to reach the higher  
25 limit, if anything, for the 75 that was proposed by

1 Applicant?

2 MR. THERIAULT: The -- currently the -- the  
3 controls that are included in the base design of the  
4 facility now do achieve that 75 DBA limit. They include the  
5 SCR unit itself, the selective catalytic reduction unit. It  
6 is a large muffler on the exhaust noise created by the gas  
7 turbine. The gas turbine itself is enclosed within a high  
8 performance acoustical enclosure. The ventilation air which  
9 is brought into the combustion turbine enclosure to cool  
10 that, that is a silence ventilation system. There is the  
11 air that is fed into the combustion turbine to be used as  
12 part of the fuel system. That has got a built-in silencer  
13 system. And then General Electric would be providing some  
14 specific controls on particular inter-cooler piping systems  
15 and some other details.

16 But the current noise control design of the plant  
17 achieves the 75 decibel property line standard, if you will.

18 HEARING OFFICER RENAUD: Okay.

19 MS. FOSTER: I have a few follow-up clarification  
20 questions.

21 HEARING OFFICER RENAUD: Yes, please. Go ahead.

22 DIRECT EXAMINATION

23 MS. FOSTER: Just a couple. So just to clarify,  
24 the design that you just explained, it's designed to meet 75  
25 DBA at the property line which will effectively be 63 DBCNAL

1 (phonetic) at the detention facility?

2 MR. THERIAULT: That is exactly correct.

3 MS. FOSTER: Okay. And can you clarify the  
4 location of the gas compressor? Will it be located in an  
5 enclosure, in a building? Will it be outside? And is that  
6 a large component of noise for the project?

7 MR. THERIAULT: If I said gas compressor I should  
8 have said the combustion turbine generator. But the  
9 combustion turbine generator is a major component. It's the  
10 major electrical producing component of the plant. There  
11 will be three of them. And each of those will have a high  
12 performance acoustical enclosure around them.

13 MS. FOSTER: No further questions.

14 HEARING OFFICER RENAUD: Okay. Do you have any  
15 information regarding the existing ambient noise levels at  
16 the CCA property?

17 MR. THERIAULT: Yes. Yes. They're not a part of  
18 the record, but the applicant did conduct 25 hours worth of  
19 noise monitoring at the CCA property line. And that  
20 revealed a level in the area of 58 to 59 decibels as a  
21 current level measurable at a receiving area on CCA --

22 HEARING OFFICER RENAUD: Okay.

23 MR. THERIAULT: -- in that region. There was  
24 actually a property -- there was a measurement taken on the  
25 north side of the road and the south side of the property

1 for the major road that it abuts, the proposed land use,  
2 between the power plant and CCA.

3 HEARING OFFICER RENAUD: And can you tell us then,  
4 if we added the 75 from the project that you're talking  
5 about to that existing ambient level, what -- what would it  
6 be?

7 MR. THERIAULT: The 75 -- okay. Let's see, the --  
8 the 63 would be -- it would be -- it would essentially raise  
9 to 5 DB more than it is now, I mean over 5 DB more than it  
10 is at that location.

11 HEARING OFFICER RENAUD: Which would be something  
12 like 64?

13 MR. THERIAULT: That's right. That's --

14 HEARING OFFICER RENAUD: All right.

15 MR. THERIAULT: That's -- that's what I  
16 calculated. And -- and we should be careful or cognizant --  
17 I'll choose my words -- we should be cognizant that the way  
18 that the power plant is positioned there is only really a  
19 small region of the CCA property that gets exposed to these  
20 numbers that I was talking about. It's really just a  
21 southwestern boundary, either of the -- of the recreation  
22 area or of the EMDF building itself that would be exposed to  
23 the numbers I just quoted. Levels further away from that  
24 corner could be up to nine decibels less. So there's --  
25 there -- the numbers that I'm using are worse case. This is

1 all three combustion turbines operating simultaneously at  
2 maximum power output. They assume favorable sound  
3 propagating conditions, wind blowing from the project,  
4 from -- from the plant towards CCA. We considered it a  
5 conservative analysis.

6 HEARING OFFICER RENAUD: Thank you.

7 PRESIDING MEMBER PETERMAN: Okay.

8 HEARING OFFICER RENAUD: Anything else?

9 PRESIDING MEMBER PETERMAN: No.

10 HEARING OFFICER RENAUD: Okay.

11 MS. SMITH: I have a quick question.

12 HEARING OFFICER RENAUD: Ms. Smith, go ahead,  
13 please.

14 CROSS-EXAMINATION

15 MS. SMITH: You stated that the plant was not  
16 going to be operating during the evening; am I correct?

17 MR. THERIAULT: It's expected operating time is  
18 almost exclusively between 7:00 a.m. and 10:00 p.m. at  
19 night.

20 MS. SMITH: And that's based on the operating  
21 data?

22 MR. THERIAULT: That is based on the predicted  
23 operating times for the facility.

24 MS. SMITH: And do you have that data?

25 MR. THERIAULT: I think the project can supply

1 that data.

2 MS. FOSTER: Can I ask -- can I ask a clarifying  
3 question here? It's -- or can I make a statement? It's  
4 the -- the project will operate as needed, as dispatched by  
5 CAISO. So the statement that it is -- it is unlikely to  
6 operate at night does not necessarily mean that it will not  
7 be operational in the nighttime. But historically, data for  
8 similar plants indicates that they do not very often run in  
9 the evening hours, in the nighttime hours.

10 MR. THERIAULT: And if I might add, by rare, by --  
11 by -- by rare, it's my understanding that APEX is the  
12 applicant's sister facility, the Panoche Energy Center, has  
13 run for a couple of 24-hour periods twice over a period of  
14 three years.

15 HEARING OFFICER RENAUD: All right. Thank you.

16 MS. SMITH: I have --

17 HEARING OFFICER RENAUD: Ms. Smith, go ahead.

18 MS. SMITH: -- one more question. And also is --  
19 you said that the plant would only be running between -- or  
20 typically be running between 7:00 a.m. to 10:00 a.m.  
21 However, hasn't the applicant stated that there will be  
22 significant morning starts, starting as early as 6:00 a.m.?

23 MR. THERIAULT: I am not aware of that.

24 MS. SMITH: I'm sorry. My connection isn't that  
25 great. What did you say?

1 MR. THERIAULT: I said I'm not aware of that.

2 MS. SMITH: You're not aware of that. Okay.

3 Thank you.

4 HEARING OFFICER RENAUD: Thank you.

5 MS. ALLEN: I've got one question.

6 HEARING OFFICER RENAUD: Okay.

7 CROSS-EXAMINATION

8 MS. ALLEN: Mr. Theriault --

9 HEARING OFFICER RENAUD: Press your screen there.

10 MS. ALLEN: Mr. Theriault, when you mentioned the  
11 expectation that the plant during the early years would  
12 operate approximately 2,000 hours, is this based on  
13 operating data for similar power plants or is it based on  
14 terms and the power purchase agreement for this project?

15 HEARING OFFICER RENAUD: No. I understand it as  
16 based on operating condition -- operating records for  
17 similar plants.

18 MS. ALLEN: Thank you.

19 MS. SMITH: And --

20 HEARING OFFICER RENAUD: Go ahead, Ms. Smith.

21 MS. SMITH: -- I just have one more question.

22 FURTHER CROSS-EXAMINATION

23 MS. SMITH: And do you have that operating data --  
24 or operator data available?

25 HEARING OFFICER RENAUD: Does this witness have

1 it? Is that the question?

2 MR. THERIAULT: Yes. Yes.

3 MS. SMITH: Yes.

4 MR. THERIAULT: No.

5 MS. SMITH: And has -- and has he produced that?

6 HEARING OFFICER RENAUD: He doesn't have it.

7 MS. SMITH: He doesn't have it.

8 HEARING OFFICER RENAUD: Correct.

9 MS. SMITH: And then at this time we'd like to  
10 make a motion to strike his testimony since he's basing his  
11 testimony on data that's nonexistent at this hearing.

12 HEARING OFFICER RENAUD: All of his testimony?

13 MS. SMITH: Well, the testimony referring to the  
14 operator data based on the plants operation on -- between  
15 7:00 a.m. to 10:00 p.m., and the testimony from that point,  
16 I guess.

17 HEARING OFFICER RENAUD: Well, we're not going to  
18 strike the testimony. But -- but given the cross-  
19 examination questioning conducted by you I think we'll --  
20 we'll give it the weight that it's due.

21 MS. SMITH: Okay.

22 HEARING OFFICER RENAUD: And I have -- we have  
23 another question by Ms. Foster.

24 MS. FOSTER: I was just going to say that -- that  
25 we would oppose such a motion. It's -- it's his expert

1 testimony and his expert opinion based on his  
2 professional --

3 HEARING OFFICER RENAUD: Okay.

4 MS. FOSTER: -- situation.

5 HEARING OFFICER RENAUD: Thank you. Thanks. You  
6 have the ruling. Okay. Okay.

7 Any -- any further questions for Mr. Theriault?

8 MR. BELL: I just have a couple --

9 HEARING OFFICER RENAUD: Mr. Bell.

10 MR. BELL: -- if I may.

11 CROSS-EXAMINATION

12 MR. BELL: You talk about the sound wall is one  
13 way to comply with the lower decibel level. Did you  
14 consider rearranging the project site to move the noise-  
15 producing structures farther away from CCA?

16 MR. THERIAULT: That's not really feasible. Small  
17 changes in noise levels could probably be realized that way.  
18 But the site is relatively confined. And so the short  
19 answer is it would not produce the amount of reduction that  
20 we would need.

21 MR. BELL: Would it produce a portion of the  
22 reduction?

23 MR. THERIAULT: We need on the order of a 15  
24 decibel reductions in order to go from the 75 DBA amount to  
25 what would be the interpretation of the county standard.

1 That is an enormous amount of noise control. If we add in a  
2 3 DB design margin that puts it at an 18 decibel reduction;  
3 enormous. You could probably realize one or two decibels by  
4 moving the moving the equipment.

5 MS. FOSTER: Applicant -- Applicant would like to  
6 address that really quickly, if that's -- if that's  
7 possible.

8 MR. BELL: Sure.

9 MR. JENKINS: Yes. I'd like to state for the  
10 record in response to the question on whether the site can  
11 be reoriented, physically the answer simply is, yes. But  
12 the practical response is, absolutely not given the power  
13 purchase agreement we have to be online by May of 2014. And  
14 kind of rearrangement would reopen this process and it would  
15 certainly be a fatal flaw. Thank you.

16 HEARING OFFICER RENAUD: And the record should  
17 reflect that that was David Jenkins.

18 MR. JENKINS: David Jenkins.

19 HEARING OFFICER RENAUD: Yes. Thank you.

20 MR. BELL: I have no questions for Mr. Jenkins.  
21 But I would like to follow up with a couple more.

22 Did you consider pump enclosures?

23 MR. THERIAULT: The -- well, if the pump  
24 enclosures -- the gas compressors? I mean -- I mean,  
25 there's dozens of pieces of equipment. And the main --

1 the -- the main noise generators have to be mitigated first,  
2 sort of as in a rank order. So since those -- since those  
3 are sources like the combustion turbines and the SCR stack  
4 exhaust it -- it doesn't make any -- it's not efficient to  
5 enclosure a smaller noise maker because the change in sounds  
6 level, the reduction in sound level that you'd -- you'd  
7 realize is very small. So you have to attack the main  
8 components of noise. And in this case the main components  
9 of noise are very large sources, the combustion turbines  
10 themselves, the SCRs, the stack exhaust. So --

11 MR. BELL: I should have started big.

12 MR. THERIAULT: Yeah.

13 MR. BELL: What about the -- do you consider low-  
14 noise condenser fans?

15 MR. THERIAULT: The -- the -- again, that alone,  
16 that alone would not be sufficient to achieve the type of  
17 reduction that would be needed to -- to meet these levels.  
18 Again, these -- these -- all of these pieces of equipment  
19 are rank ordered in the model. And -- and to consider one  
20 small component compared to a much larger one acoustically  
21 doesn't make for an effective noise control design.

22 MR. BELL: So you wouldn't consider the condenser  
23 fans to be one of the larger or greater noise makers from a  
24 facility of this type?

25 MR. THERIAULT: It -- relative -- relative to a

1 noise source that is like the combustion turbine? Not  
2 necessarily, no. No. I mean, it is a component and --  
3 and -- but the -- the model would direct us to quiet the gas  
4 turbines and the HeRSiGs for -- no, excuse me, the stack  
5 exhaust first.

6 MR. BELL: But -- but would the use of low-noise  
7 condenser fans help move towards achieving the goal of lower  
8 noise impact?

9 MR. THERIAULT: It could.

10 MR. BELL: And pump enclosures, did you  
11 consider -- oh, wait, I asked pump enclosures.

12 Transformer blast walls, did you consider those?

13 MR. THERIAULT: Transformer walls are normally a  
14 part of a base facility design. So they're -- they're  
15 always included in the model.

16 MR. BELL: Okay. And gas compressors, did you  
17 look at those?

18 MR. THERIAULT: The gas compressors, yes, are  
19 enclosed.

20 MR. BELL: Okay. I have no further questions.

21 HEARING OFFICER RENAUD: Okay. Any -- any other  
22 questions? I --

23 MS. SMITH: I have no further questions.

24 HEARING OFFICER RENAUD: Anybody? I have one.

25 Okay. Mr. Theriault, you referred to an ambient noise study

1 that was done at the CCA property that you have seen that is  
2 not in the record, but you tell -- you told us you knew that  
3 the measurement was, I believe you said 59.

4 MR. THERIAULT: Fifty-eight and fifty-nine.

5 HEARING OFFICER RENAUD: Fifty-eight and fifty-  
6 nine. Is there -- is that study available to you that you  
7 could provide to us?

8 And I can maybe direct that to the applicant, as  
9 well.

10 MS. FOSTER: Just a moment. I don't believe  
11 there's any sort of analysis that's available. I believe it  
12 was background data that was taken when the AFC was  
13 practiced. But --

14 MR. THERIAULT: Maggie, Ron Reeves had prepared  
15 some supplemental measurements. And this was in a letter.

16 MS. FITZGERALD: I don't believe that Ron did  
17 measurements at the exact CCA facility, the location where  
18 it's at now, although I would have to look back in the  
19 notes. I was under the impression that he collected  
20 baseline noise measurements where the CCA facility was  
21 originally proposed, on the other side of Alta Road.

22 MR. THERIAULT: Well, that -- and that is the  
23 measurements that I'm referring to. That -- that --  
24 those -- those are the measurements that I'm referring to.

25 HEARING OFFICER RENAUD: All right. So that's

1 part of the record then?

2 MR. THERIAULT: But -- but still along the CCA  
3 property line.

4 PRESIDING MEMBER PETERMAN: I think we're just  
5 trying to get a sense of the potential incremental impacts.  
6 And so the way you stated it I took that as more fact about  
7 that exactly sites ambient noise levels than the sense I'm  
8 getting from your testimony now. That's why I wanted to  
9 just clarify and if that was a study that was done at the  
10 location put that on the record, because that speaks to that  
11 five decibel potential change that you put on the record.

12 MR. THERIAULT: And -- and also, I caveated that  
13 by saying that the predicted level, this -- this -- this 63  
14 DB predicted level that I have, that's at -- that's at one  
15 corner of the facility. And -- and in all fairness, noise  
16 levels are lower along all other portions of CCA. So to  
17 ask, okay, to ask, well, what is the ambient increase, I  
18 technically need to know what is the ambient level along  
19 every portion of the CCA property to combine with my  
20 predicted level of PPEC noise to give you this cumulative  
21 result that you -- we'd all like to have. That's -- the  
22 data just isn't -- isn't there, other than this one data  
23 point that was taken near where the previous facility was  
24 sited, but still on CCA property line.

25 We're talking just a little -- we would be talking

1 a little bit east, more east, as opposed to more west.

2 PRESIDING MEMBER PETERMAN: That's not going to  
3 mean anything to me.

4 MR. THERIAULT: Okay.

5 PRESIDING MEMBER PETERMAN: Thank you.

6 HEARING OFFICER RENAUD: Anything further?  
7 Questions of this witness?

8 MR. BELL: Nothing further.

9 HEARING OFFICER RENAUD: No. Okay. Thank you.  
10 Good.

11 Mr. Bell, we have questions about the ambient  
12 noise level at the CCA property. And I don't know if you  
13 have someone there who could ask -- answer questions. Would  
14 that be Mr. Khoshmashrab or --

15 MR. BELL: Yes.

16 HEARING OFFICER RENAUD: All right. You can stay  
17 there.

18 Mr. Khoshmashrab, are there -- are you aware of  
19 any measurements of the ambient noise levels at the CCA  
20 property?

21 MR. KHOSHMAHRAB: I have to look at the AFC. I  
22 have to look at the AFC. I have a copy of the noise section  
23 in front of me.

24 HEARING OFFICER RENAUD: None -- none were made by  
25 staff, though, I take it. You would -- you would know that

1 if it had been; right?

2 MR. KHOSHMAHRAB: I have not seen the AFC. I  
3 haven't looked at it. Okay. There is the ambient noise  
4 monitoring. So this is the AFC -- the -- the FSA -- the FSA  
5 has two locations that were monitored, and they were LT-1  
6 and LT-2. Those are the residential receptors that are away  
7 from the project. On the boundary of the project site, I  
8 don't have any information here in the FSA. However, it  
9 might be in the AFC, and I just have to find that section.

10 HEARING OFFICER RENAUD: Maybe we can circumvent  
11 that by asking the applicant whether you included any  
12 ambient noise levels for the CCA property in the AFC?

13 MS. FOSTER: The AFC -- I have the noise section  
14 in front of me. The AFC site's ambient noise levels at the  
15 CCA facility as cited in the noise report that went with the  
16 CCA's major use permit application, but it doesn't any sort  
17 of specifics as to where those locations are, from what I  
18 can tell. I don't know if it's independent.

19 MR. KHOSHMAHRAB: Now, are you -- are you asking  
20 the property line of the Pio Pico site or CCA?

21 HEARING OFFICER RENAUD: CCA.

22 MR. KHOSHMAHRAB: CCA. Okay.

23 HEARING OFFICER RENAUD: Yeah.

24 HEARING OFFICER RENAUD: I think we're getting at  
25 is -- is what would be the increase caused by the project at

1 the CCA property line.

2 MR. KHOSHMAHRAB: Yes. I -- I do remember seeing  
3 that. And I think it was the CCA's -- the county's -- the  
4 county's permit or use permit for the CCA, if I can recall  
5 correctly. And there -- there was a graph there that showed  
6 the property line noise measurements that were taken. There  
7 is one draft here that shows that it's actual project-  
8 generated noise levels. So that would be the project noise  
9 levels. But it's not an existing noise measurement.

10 There is another graph that shows future phase one  
11 exterior traffic noise levels at the property line. And it  
12 shows somewhere between 58 and 59.

13 There is another one that is existing traffic  
14 noise levels, and that is pretty much the same on the  
15 southern boundary, which is closer to the Pio Pico plant.

16 HEARING OFFICER RENAUD: All right. Okay. And  
17 did you hear Mr. Theriault's testimony regarding the  
18 increase in the noise level that would be caused at that  
19 same spot as being about 5 decibels, assuming we had 75 from  
20 the project at the property line? I'm probably not stating  
21 it correctly, but the bottom line --

22 MR. KHOSHMAHRAB: It's at --

23 HEARING OFFICER RENAUD: -- sounded like five to  
24 me.

25 Mr. Theriault, please.

1           MR. THERIAULT: You're -- your correct, sir. But  
2 the -- we have to be careful here. We have to be careful as  
3 to where my predicted level and where this ambient level is  
4 being measured.

5           Now, I do have the San Diego Correctional Facility  
6 assessment that was done for noise. And as Shahab said, it  
7 does show noise level measurements made at several locations  
8 around the property at the time, one in the far eastern  
9 corner, one in the northeastern corner, one on the far west.  
10 The measurement in this location, we have to make sure that  
11 I'm adding that to my predicted plant level at that  
12 location. My predicted plant level is way over here, worst  
13 case. So this five DBA increase I just talked about might  
14 be actually far less at this location over here.

15           All right. And -- and the document you're  
16 referring to is -- what is that called?

17           MR. THERIAULT: This is the San Diego Correction  
18 Facility Alternative Site Plan Concept, MUP-06074-W1  
19 (phonetic).

20           HEARING OFFICER RENAUD: Let me ask Mr. Williams a  
21 question. Is this one of your documents? Is it on your  
22 exhibit list? I just want to refer -- be able to refer to  
23 it right now.

24           MR. WILLIAMS: This is the noise report that was  
25 submitted with CCA's MUP application to the county.

1 HEARING OFFICER RENAUD: All right. Is that -- do  
2 we have an exhibit -- is that on your exhibit list?

3 MR. WILLIAMS: It is on -- I think it was on your  
4 exhibit list.

5 HEARING OFFICER RENAUD: I didn't see anything  
6 like that on --

7 MR. WILLIAMS: It's the August 25th, 2010 report.

8 MS. FOSTER: That's on -- that was included in  
9 Applicant's exhibit list. And I believe CCA included a  
10 noise report in their exhibit list, but Applicant wasn't  
11 provided a copy yet. I think it was a noise report for the  
12 newest --

13 HEARING OFFICER RENAUD: All right. I think --

14 MS. FOSTER: -- MUP application.

15 HEARING OFFICER RENAUD: I think it must be  
16 Exhibit 124 then. Would you correct me on that?

17 MS. FOSTER: That is correct.

18 HEARING OFFICER RENAUD: All right. You're  
19 referring to Exhibit 124 then. So that's -- that's good for  
20 us to know that.

21 MR. WILLIAMS: Okay.

22 MR. THERIAULT: So to -- to reiterate, in order to  
23 do this comparison that you're looking for you must be  
24 careful to use the predicted level at the same location that  
25 you have your measurement. That's all I'm cautioning.

1 HEARING OFFICER RENAUD: All right. Okay.

2 So back to Mr. Khoshmashrab, are you looking at  
3 that document as well, or something else?

4 MR. KHOSHMAHRAB: I'm not looking at that  
5 document yet.

6 HEARING OFFICER RENAUD: Would you give it to him  
7 please?

8 MR. THERIAULT: Absolutely.

9 HEARING OFFICER RENAUD: Thanks. He's going to  
10 give you this Exhibit 124. And show him the page you were  
11 talking about.

12 (Colloquy Between Mr. Theriault and Mr. Khoshmashrab)

13 HEARING OFFICER RENAUD: Okay. Again, if you  
14 might, I need you help me with my question because I'm not  
15 exactly sure how to ask it. But what I want to find out is  
16 whether you -- first, whether you heard the testimony  
17 regarding what the increase would be caused by the project?

18 And second, if you heard it would you agree or disagree  
19 with it?

20 MR. KHOSHMAHRAB: I did hear. And apparently  
21 from what I understand, with the mitigation measures  
22 currently proposed for the project the -- Mr. --

23 MR. THERIAULT: Theriault. Theriault. Mike  
24 Theriault.

25 MR. KHOSHMAHRAB: -- Theriault just indicated

1 they will be able to reach a level of 53 at the southeastern  
2 corner of the property line of the CCA, which is comparable  
3 to existing M90 noise level, which means the increase will  
4 not be significant.

5 HEARING OFFICER RENAUD: So would you be able --  
6 could -- from that statement can -- could you generalize as  
7 to whether or not the noise impacts caused by the project  
8 would be significant anywhere on the CCA property?

9 MR. THERIAULT: Yeah. I think that's an excellent  
10 question and -- and -- I'm sorry.

11 HEARING OFFICER RENAUD: I'm not asking you.

12 MR. THERIAULT: I'm sorry.

13 HEARING OFFICER RENAUD: I know what you'd say.

14 MR. THERIAULT: I thought it was an excellent  
15 question too.

16 MR. KHOSHMAHRAB: Okay. For that I will have to  
17 look at -- I have one number that you just gave me, and that  
18 is 63 DBA at the southwestern corner of CCA. The -- there  
19 was no ambient measurement taken exactly at that point. But  
20 there were two measurements taken, one at the northeastern  
21 part -- northwestern part of it, and that's ML -- ML-3  
22 (phonetic). And where will I find that number?

23 MR. THERIAULT: It's on that same table.

24 MS. FOSTER: I --

25 MR. KHOSHMAHRAB: I don't know where the table

1 is.

2 MS. FOSTER: Can I jump in and object really  
3 quickly. This is requiring our witness to speculate about a  
4 report generated by a different noise consultant and  
5 extrapolate information based on modeling we've done and not  
6 having looked at it. So I just wanted to object to the line  
7 of questioning because it calls for speculation.

8 HEARING OFFICER RENAUD: He seems to be  
9 comfortable with -- are you speculating, Mr. Theriault?

10 MR. THERIAULT: There's -- there's -- there's --

11 HEARING OFFICER RENAUD: Come to the microphone.

12 MR. THERIAULT: I'm making estimates, but I'm  
13 comfortable with them.

14 HEARING OFFICER RENAUD: They're -- they're  
15 estimates, though, that you feel will lie within a  
16 reasonable range of scientific, what, likelihood --

17 MR. THERIAULT: Yes.

18 HEARING OFFICER RENAUD: -- something like that?  
19 Okay.

20 MR. KHOSHMAHRAB: Okay.

21 HEARING OFFICER RENAUD: Go ahead.

22 MR. KHOSHMAHRAB: Can I go on?

23 HEARING OFFICER RENAUD: Yes.

24 MR. KHOSHMAHRAB: ML-3, there is a 49 decibel  
25 measurement at ML-3, which is northwestern corner. And

1 east -- western -- east -- southeastern corner is 53. If  
2 you combine these, assuming that we are not taking into  
3 consideration any other noise sources between these two  
4 points, then the average of these would be, just very  
5 roughly, somewhere in the low 50s, 51 maybe. So in order to  
6 mitigate to 51 at the -- at the southwestern corner of CCA,  
7 which a prediction of 63 you would have to mitigate another  
8 12 decibels. Am I reading that correctly, from what you  
9 told me?

10 MR. THERIAULT: I'd have to look again.

11 HEARING OFFICER RENAUD: So in other words, your  
12 testimony would be that the increase would be greater than  
13 five decibels by a wide margin?

14 MR. KHOSHMAHRAB: Yes. Now, that -- we have to  
15 take also into consideration whether -- whether that  
16 increase is at night or during the daytime. Because at  
17 nighttime, then anything about five decibels is usually  
18 considered significant at residential receptors. So we have  
19 to work with that from there.

20 HEARING OFFICER RENAUD: Okay. Okay. Thank you.

21 Anyone have any questions for Mr. Khoshmashrab?  
22 All right.

23 Thank you very much.

24 MR. KHOSHMAHRAB: You're welcome.

25 HEARING OFFICER RENAUD: Any questions of Mr.

1 Theriault before we let him go? Okay.

2 Well, I think it's quite clear to the committee  
3 that this is -- this is an area we'll need briefing on from  
4 the parties. And I think we're interested, both in the  
5 factual and the legal issues. And we have questions about  
6 whether the CEQA impacts as to what's the -- is it a  
7 significant impact or not, and -- and the LORS issues,  
8 whether or not there's -- what is the applicable law and  
9 would the project fit within it. And we usually discuss  
10 briefing schedules at the end but, you know, I'm thinking  
11 this is -- this is clearly a significant area of dispute and  
12 one that involves a lot of material for the committee to  
13 digest. So the sooner we can get those briefs the better.

14 Does anyone want to make me an offer as to when  
15 you can do that by?

16 MS. FOSTER: Applicant can get you legal briefs in  
17 seven to ten days.

18 HEARING OFFICER RENAUD: All right. Staff, does  
19 ten days sound reasonable?

20 MR. BELL: Six to nine.

21 HEARING OFFICER RENAUD: Oh, we've got a bidding  
22 war here.

23 MR. BELL: Seven to ten is reasonable.

24 HEARING OFFICER RENAUD: All right. Today is July  
25 23rd, and that's a Monday. So I'm thinking about something

1 like a week from Wednesday. Sound reasonable? I'll get you  
2 a date on that in just a second here but -- okay. I think  
3 that would be -- I think the Wednesday would be August 1st;  
4 right? Okay. Sound good?

5 MR. BELL: Yes.

6 HEARING OFFICER RENAUD: And do you want -- do you  
7 want to do opening briefs and reply briefs? Well, let me  
8 just put it this way. If you want to do a reply brief get  
9 that to us by the following Monday, which would be the 6th.  
10 Okay?

11 MR. BELL: Thank you.

12 HEARING OFFICER RENAUD: Okay. Thank you. All  
13 right.

14 Is there anything further on noise?

15 MR. BELL: Not on behalf of Staff, no.

16 HEARING OFFICER RENAUD: All right. Then I think  
17 we'll consider that one completed. And we just have 20  
18 topics to go. Great.

19 Does anyone need a break at this point for a few  
20 minutes before we go further? I'm especially looking at the  
21 court reporter who is there typing away. So we'll take a 15  
22 minute break and see you back at 5:15.

23 (Off the Record from 5:02 p.m., Until 5:20 p.m.)

24 HEARING OFFICER RENAUD: Okay. It looks like we're  
25 ready, so let's proceed. So is everyone -- everyone here?

1 Yeah.

2 MR. BELL: Yes.

3 HEARING OFFICER RENAUD: All right.

4 MS. SMITH: Yes, sir.

5 HEARING OFFICER RENAUD: Good. Thank you. Okay.

6 We're still on the uncontested topics. Well, that is we  
7 haven't completed those yet. We just -- we just completed  
8 noise. And -- but -- but we should get the uncontested  
9 topics squared away first before we proceed further with the  
10 contested ones.

11 On the uncontested topics list is -- is traffic  
12 and transportation which is a parties as to which the  
13 parties are in agreement, but the committee has some  
14 questions. And Eileen Allen will ask those questions. And  
15 I believe you're going to ask them of Mr. Solorio; correct?

16 MS. ALLEN: Yes.

17 HEARING OFFICER RENAUD: So, Eric, if you would  
18 just raise your right hand.

19 (Whereupon Mr. Soloria is sworn.)

20 HEARING OFFICER RENAUD: State your full name.

21 MR. SOLORIO: Eric Solorio.

22 HEARING OFFICER RENAUD: Proceed please.

23 MS. ALLEN: This question is about Staff's traffic  
24 cumulative impact analysis. Given the other projects  
25 planned for construction in the vicinity of the Pio Pico

1 Project, is it possible that if there were schedule changes,  
2 such as the CCA project starting construction later than  
3 noted in the FSA or if the Pio Pico Project were to be  
4 approved and it started sooner, is it possible that the peak  
5 traffic intervals could coincide?

6 MR. SOLORIO: I believe it's possible.

7 MS. ALLEN: So I was wondering whether, if there  
8 were such an overlap during the potential peak traffic  
9 periods, could it cause the current level of service on Otay  
10 Mesa Road between State Route 905 and Sanjo Road (phonetic)  
11 to deteriorate below level of service D, and then possibly  
12 become unacceptable?

13 MR. SOLORIO: I would respectfully ask that I'm  
14 able to defer that question to Eric Knight, who is the  
15 office manager of the environmental office and on the phone.

16 HEARING OFFICER RENAUD: Mr. Knight is on the  
17 phone?

18 MR. SOLORIO: Yes.

19 HEARING OFFICER RENAUD: Okay. Mr. Knight, can  
20 you hear us?

21 MR. KNIGHT: Yes, I can.

22 HEARING OFFICER RENAUD: All right. Good. Did  
23 you hear Ms. Allen's question?

24 MR. KNIGHT: Yeah. She asked if the schedules for  
25 the other projects that are identified in the cumulative

1 impact analyses -- if the impact analysis were to change  
2 would there be a potential overlap. And I think Mr. Solorio  
3 potentially thought that could be the case, and that  
4 therefore it was level of service on Otay Road dropped to an  
5 unacceptable level of service, below the target which is an  
6 acceptable level of service for the road, for Otay Road.

7 MR. KNIGHT: Having not written the analysis  
8 myself, I'm the office manager, I review all the testimony  
9 that was written in the office, I'm just having to really  
10 kind of quickly go through the analysis here. I'm not  
11 certain if all those projects share -- would share -- would  
12 contribute to their traffic, too, at Otay Road or not.  
13 But -- so I don't really -- I really can't -- I'm really not  
14 in a position to answer that question.

15 MS. ALLEN: Well, the FSA indicates that CCA's  
16 construction traffic would travel on Otay Mesa Road. The  
17 Otay crossing is Commerce Park, and the International  
18 Industrial Park the travel route is uncertain about travel  
19 on Otay Mesa Road.

20 But what I'm getting at is whether it would be  
21 prudent to consider adding a point to Trans 3 that would  
22 require the applicant to coordinate with other projects to  
23 avoid a possible cumulative construction traffic impact?

24 MR. KNIGHT: That -- that may be a prudent element  
25 to add. I mean, that -- that has appeared in some other

1 conditions of certification on other projects. It's, in  
2 some ways, maybe a deferral of -- of, you know, analysis.  
3 But it may be prudent, given that what we know today may  
4 change later on. Schedules do -- do change, and this  
5 analysis was based on what we knew about the schedules at  
6 the time. So I don't think we'd be opposed to adding such a  
7 provision to the Trans 3 condition, the traffic control  
8 conditions.

9 MS. ALLEN: All right. Thank you. That concludes  
10 my questions for Staff.

11 HEARING OFFICER RENAUD: Thank you. Are there any  
12 follow-up questions by the parties? Applicant?

13 MS. FOSTER: No.

14 HEARING OFFICER RENAUD: No. Staff?

15 MS. SMITH: No questions.

16 HEARING OFFICER RENAUD: Thank you, Ms. Smith.

17 Mr. Bell, no?

18 MR. BELL: No further questions.

19 HEARING OFFICER RENAUD: No questions. All right.  
20 Thanks.

21 CCA, are you still here? I don't see them.

22 All right. Thanks. Well, then that's -- that  
23 concludes traffic.

24 MR. BELL: If I could --

25 HEARING OFFICER RENAUD: Yeah. Go ahead.

1           MR. BELL: -- directing the committee's attention  
2 to Section 410-20, page 27, it does appear that this has  
3 already been taken into consideration by Staff. Under the  
4 third bold subparagraph,

5           "San Diego County's Planning Commission will  
6 likely review the proposed correctional facility/East Mesa  
7 Detention Facility Project by late Summer 2012. If  
8 approved, the project applicant would immediately afterward  
9 apply for building and grading permits. Construction would  
10 probably begin in the Fall 2012 or early 2013, and would  
11 overlap with construction of the PPEC."

12           And then it follows after that. It does appear  
13 that staff has taken that into consideration, the conclusion  
14 made by staff at the end,

15           "Therefore, Staff does not expect significant  
16 cumulative traffic impacts resulting from construction of  
17 the PPEC and the correction al facility."

18           That's ending on page 4.10-28.

19           HEARING OFFICER RENAUD: So while the construction  
20 could be simultaneous the peak might not, is less likely to  
21 be simultaneous? Is that pretty much --

22           MR. BELL: That was the conclusion Staff reached  
23 in its analysis of the FSA.

24           MS. ALLEN: So I had a little bit of follow-up to  
25 that.

1 HEARING OFFICER RENAUD: Go ahead.

2 MS. ALLEN: As I recall, the CCA attorney on July  
3 9th stated that they could delay construction until early  
4 2013.

5 So my question is about possible delays for CCA  
6 and possible earlier starts for Pio Pico. Admittedly, this  
7 is somewhat speculative, but I'm still dealing with the  
8 possibility of peak traffic periods overlapping, if those  
9 two things were to line up.

10 MR. BELL: And that is actually a very good  
11 questions. But as a law school professor of mine once said,  
12 if you change the facts you change the answer. And we could  
13 get into various iterations of what could happen regarding  
14 the timing with respect to traffic patterns. It may or may  
15 not. As of now, Staff's analysis indicates that it would  
16 not cause any impacts to traffic. In the future there --  
17 there may be a change. But as the committee is aware, the  
18 license is granted as somewhat of a snapshot in time. We  
19 make a decision based on the information, the best  
20 information available at the time the decision is made. And  
21 based on what we have now, beyond speculation, we -- we  
22 found that there's -- there would be no significant impacts.

23 But that is a very good question and I wish we had  
24 a more definitive answer, but --

25 MS. ALLEN: Is -- are -- are you on behalf of

1 Staff objecting to the suggestion of adding this point --

2 MR. BELL: No. No.

3 MS. ALLEN: -- to Trans 3?

4 MR. BELL: No. No, not at all.

5 MS. ALLEN: Okay. Thank you.

6 HEARING OFFICER RENAUD: Okay. Thank you. Okay.

7 We've reached the point now where we will try to  
8 close out the uncontested topics. And then I read them  
9 into -- I read the list into the record earlier. With  
10 respect to those 14 topics, does Applicant stipulate that  
11 the testimony concerning those topics may be submitted by  
12 declaration and move those exhibits into the record?

13 MS. FOSTER: Yes.

14 HEARING OFFICER RENAUD: All right. Same question  
15 for staff?

16 MR. BELL: Staff so stipulates.

17 HEARING OFFICER RENAUD: Thank you. Same question  
18 for Simpson.

19 MS. SMITH: No.

20 HEARING OFFICER RENAUD: I'm sorry?

21 MS. SMITH: We submit.

22 HEARING OFFICER RENAUD: You do? Thank you.

23 And CCA? Okay. Apparently, CCA is no longer  
24 represented at the hearing so we don't have their agreement,  
25 but we'll have to proceed without it.

1 (Applicant's Exhibit Nos. 130 and 131, Staff's Exhibit  
2 Nos. 206 and 207, and Intervener Simpson's  
3 Exhibit No. 304 were admitted)

4 HEARING OFFICER RENAUD: All right. Thank you  
5 then.

6 Let's move on to the contested topics. And I've  
7 been informed that we do have some witnesses waiting with  
8 time constraints. And so let's start first with biology.

9 Applicant, I understand you do not have any direct  
10 testimony to offer at this time?

11 MS. FOSTER: That is correct.

12 HEARING OFFICER RENAUD: Okay. Staff, do you  
13 have -- you have Ann Crisp waiting on the line, I believe.

14 MR. BELL: Yes.

15 HEARING OFFICER RENAUD: All right. Would you --  
16 do you have questions for her?

17 MR. BELL: No. We'll be submitting her testimony  
18 by declaration.

19 HEARING OFFICER RENAUD: All right. And you're  
20 offering her then for -- as available for cross-examination?

21 MR. BELL: That was the request by Mr. Simpson,  
22 yes.

23 HEARING OFFICER RENAUD: Okay. So, Ms. Smith, the  
24 cross-examination of Ann Crisp, now is your opportunity.

25 MR. BELL: Should we have her sworn?

1 MS. SMITH: Okay.

2 MR. BELL: I don't believe that she's --

3 HEARING OFFICER RENAUD: Yes. And let's swear  
4 Ms. Crisp. Are you there?

5 MS. CRISP: I am here.

6 HEARING OFFICER RENAUD: Okay. Raise your right  
7 hand.

8 (Whereupon Ms. Crisp is sworn.)

9 HEARING OFFICER RENAUD: And your name, state your  
10 name please.

11 MS. CRISP: Ann Crisp.

12 HEARING OFFICER RENAUD: Thank you. Ms. Smith,  
13 can you hear well?

14 MS. SMITH: I can actually hear her --

15 HEARING OFFICER RENAUD: All right. Good.

16 MS. SMITH: -- fairly well.

17 HEARING OFFICER RENAUD: All right. Good. And  
18 the -- the topics for cross-examination in biology were  
19 nitrogen deposition impacts and the extent of the biological  
20 resources survey. So go ahead, please.

21 MS. FOSTER: Hearing Officer Renaud, sorry to  
22 interject. I wanted to let you know that Applicant does  
23 have a biology witness on the phone, as well, prepared to  
24 respond to Ms. Smith's questions if she has any questions  
25 for our witness.

1 HEARING OFFICER RENAUD: Oh. All right.

2 MS. FOSTER: All his testimony is done via  
3 declaration, but he is available. It's Lincoln Holts  
4 (phonetic).

5 HEARING OFFICER RENAUD: Okay. Lincoln Holts is  
6 also available.

7 Ms. Smith, do you have a preference for which --  
8 do you have questions for both witnesses or just one of them  
9 or --

10 MS. SMITH: I actually right now have questions  
11 for just Ms. Crisp.

12 HEARING OFFICER RENAUD: All right.

13 MS. SMITH: But if they offer rebuttal -- if the  
14 Applicant offers any rebuttal testimony I may have some  
15 follow-up, probably.

16 HEARING OFFICER RENAUD: Okay. Go ahead with your  
17 questions. Thank you.

18 CROSS-EXAMINATION

19 MS. SMITH: Okay. Ms. Crisp, on the FSA you  
20 agreed that the -- that there were several sensitive species  
21 that will be significantly impacted by the -- by the -- the  
22 construction of this plant; correct?

23 MS. CRISP: Which species are you exactly  
24 referring to?

25 MS. SMITH: On the FSA I'm referring to the --

1 the -- well, specifically the Quino Checkerspot butterfly,  
2 the Otay tarplant and San Diego Marsh Elder.

3 MS. CRISP: Not the San Diego Marsh Elder. It's  
4 the Otay tarplant.

5 MS. SMITH: Okay. So that will be -- the Otay  
6 tarplant will be -- there will be a significant impact --

7 MS. CRISP: Under indirect.

8 MS. SMITH: -- on that plant?

9 MS. CRISP: Yes.

10 MS. SMITH: Okay.

11 HEARING OFFICER RENAUD: Try -- try to avoid  
12 speaking at the same time because it does make it difficult  
13 for the court reporter to give us a clear record. Thank  
14 you. I know it's hard on the phone, but give it that two-  
15 second pause to make sure they're done before you start.  
16 Thank you.

17 MS. SMITH: Okay. Sorry.

18 Also, you're stating in your testimony that there  
19 will be some -- there will be impacts with regards to  
20 construction of several species, and perhaps even  
21 disturbance of nesting and den sites; is that correct?

22 MR. BELL: I'll object. It's outside the scope of  
23 the permitted cross-examination topic.

24 MS. SMITH: And actually --

25 HEARING OFFICER RENAUD: Go ahead.

1 MS. SMITH: -- it was just -- I just had one  
2 question on that, and that would be it then. I would just  
3 ask that the committee allow us to ask that question.

4 HEARING OFFICER RENAUD: Does it -- does it  
5 pertain to nitrogen deposition or the biological resource  
6 survey?

7 MS. SMITH: It -- it would eventually pertain to  
8 that because my question actually would go to then, would  
9 the -- during construction I'm under the impression that  
10 there is emissions of nitrogen, that there might be a  
11 nitrogen deposition.

12 HEARING OFFICER RENAUD: I'll allow that question.  
13 Go ahead.

14 MS. CRISP: Could you repeat the question?

15 MS. SMITH: Okay. During construction, do you  
16 know if there is going to be -- from the emissions from the  
17 construction will there be a significant impact on any of  
18 the species that I mentioned before?

19 MS. CRISP: I did not provide testimony on  
20 emissions impacts during construction.

21 MS. SMITH: Okay. My other question I have one  
22 more question here, and that would have to do with the  
23 biological resource surveys and migratory birds that  
24 regularly nest in the area surrounding the proposed site,  
25 have you identified the species and a nesting pattern?

1 MS. CRISP: At the time of construction they would  
2 do a preconstruction survey and identify those species.  
3 That's one of the conditions of certification.

4 MS. SMITH: Okay. At this time I don't have any  
5 further questions.

6 HEARING OFFICER RENAUD: Okay. Thank you.  
7 Questions by Staff -- I'm sorry, by Applicant?

8 MS. FOSTER: No questions.

9 HEARING OFFICER RENAUD: No questions?

10 MR. BELL: No redirect.

11 HEARING OFFICER RENAUD: All right. Thank you  
12 then. Ms. Crisp, you're -- you're done.

13 MS. CRISP: Thank you.

14 HEARING OFFICER RENAUD: Ms. Smith, do you have  
15 questions for Lincoln Holts?

16 MS. SMITH: I do not at this time.

17 HEARING OFFICER RENAUD: All right. Thank you.  
18 Okay.

19 Is there any rebuttal testimony from Applicant or  
20 Staff regarding biology?

21 MR. BELL: None.

22 MS. FOSTER: None.

23 HEARING OFFICER RENAUD: Okay. We're done with  
24 biology. Okay.

25 I understand we also have Candace Hill waiting on

1 the line with respect to land use. And, Applicant, do you  
2 have direct testimony on land use?

3 MS. FOSTER: No. We just had testimony as it  
4 related to noise.

5 HEARING OFFICER RENAUD: As I related to noise.

6 MS. FOSTER: So, no.

7 HEARING OFFICER RENAUD: All right. Okay. Is  
8 there going to be any direct questioning of Candace Hill?

9 MR. BELL: No. We'll be submitting her testimony  
10 based on the -- her written reports.

11 HEARING OFFICER RENAUD: Thank you. All right.  
12 So, Ms. Smith, you are now open for cross-examination of  
13 Candace Hill in the area of land use.

14 MS. SMITH: And I believe that we were limited to  
15 just the noise issue and the nuisance ordinances; am I  
16 correct?

17 HEARING OFFICER RENAUD: Let me see. Let me check  
18 my -- yeah, nuisance ordinance conflicts is what I have.

19 MS. SMITH: And I believe we -- we kind of covered  
20 some of that with the noise issues. So at this time I don't  
21 have any further questions.

22 HEARING OFFICER RENAUD: All right. Thank you.  
23 Okay. So is there any further testimony on land use from  
24 any party?

25 MS. FOSTER: No.

1 MR. BELL: No.

2 HEARING OFFICER RENAUD: All right. Good.

3 MS. SMITH: I would propose, I think the  
4 alternatives -- our cross, I know, and our testimony is  
5 going to be significant.

6 HEARING OFFICER RENAUD: Uh-huh.

7 MS. SMITH: I don't know if people have travel  
8 plans if they need to get on planes.

9 HEARING OFFICER RENAUD: They do, but --

10 MS. SMITH: Okay.

11 HEARING OFFICER RENAUD: But everyone does, so --

12 MS. SMITH: Okay.

13 HEARING OFFICER RENAUD: -- we're just trying to  
14 go through things as best we can.

15 We also scheduled public comment to begin at 5:30.  
16 And just let me have a sense from folks in the room, is  
17 there anyone here who wishes to provide public comment?  
18 Okay. Is there anyone on the phone who wishes to provide  
19 public comment? Okay. We'll check again at -- at 6:00 or  
20 so. But right now it looks like we can keep going.

21 MR. BELL: And if we could, just to make sure, I  
22 know our folks on the phone were waiting for this -- for  
23 their opportunity to be heard. Are they now released?

24 HEARING OFFICER RENAUD: Yes.

25 MR. BELL: Okay.

1 HEARING OFFICER RENAUD: So Lincoln Holts, you're  
2 released. It looks like Ann is gone.

3 MS. HARRIS HICKS: Hello? Hello?

4 HEARING OFFICER RENAUD: Who's calling please?

5 MS. HARRIS HICKS: Hello?

6 HEARING OFFICER RENAUD: Yes, who's there?

7 MS. HARRIS HICKS: Well, yes, this is Lyn Harris  
8 Hicks for CREED, Coalition for Responsible and Ethical  
9 Environmental Decisions.

10 HEARING OFFICER RENAUD: Yes. You've reached the  
11 Pio Pico Energy Center evidentiary hearing. Are you  
12 calling --

13 MS. HARRIS HICKS: Yes. I've been trying --

14 HEARING OFFICER RENAUD: Are you calling to --

15 MS. HARRIS HICKS: -- all day.

16 HEARING OFFICER RENAUD: Are you -- are you  
17 calling to make -- to comment, to provide public comment?

18 MS. HARRIS HICKS: I have a question, if I may.

19 HEARING OFFICER RENAUD: Okay.

20 MS. HARRIS HICKS: I'm concerned because of  
21 several different informations that I've put together from  
22 the California Public Utilities Commission and from the ISO.  
23 And I don't know whether this is something that has a  
24 bearing on your decision making at this point or whether it  
25 will in the near future or whatever. But we got the message

1 from the ISO that there is abundant energy available, that  
2 the -- that our San Onofre is not -- is no longer considered  
3 a base load element in this, all of this. And that the --  
4 the problems are not in the amount of energy that's  
5 available, but in the -- some areas where they don't have  
6 the adequate transmission to serve.

7           And I wanted -- needed to know whether that is a  
8 factor in your decision making. Because the last workshop  
9 that I attended on my computer and my phone they were -- the  
10 applicants were making questions about their place in the  
11 queue. And evidently there is sort of an unofficial, maybe,  
12 I'm not sure, but unofficial waiting list now for the  
13 eventuality of that if -- if they do not try to repair and  
14 restart unit two and three, or unit three maybe, or  
15 whatever, that then the sum of those would be allowed to --  
16 to go ahead with their -- their projects.

17           And so that made me worried because we in the  
18 area -- I live two miles from San Onofre -- have been trying  
19 for years to get the -- get some answers that will help us  
20 to do an acquisition for large numbers of people here.  
21 We -- we started out to want to -- to bring the whole of San  
22 Clemente to -- so that we could replace nuclear power and --  
23 but we've been blocked all the way along. And most recently  
24 there's the -- the -- well, I shouldn't go into all that.

25           But I should -- what I'm asking you is that if

1 your part of the process is this has -- has this company  
2 been before the CPUC? Does it have it's place in the  
3 waiting line? Or is that something that has yet to come?  
4 And -- and what will happen if -- if they get all the  
5 approvals they need from you, and then -- then are they  
6 ready to start immediately or will they have to through more  
7 processes that have to do with the ISO availabilities and so  
8 forth.

9 HEARING OFFICER RENAUD: Okay. We're going to ask  
10 Commissioner Peterman to try and help you out here.

11 MS. HARRIS HICKS: Okay. Thank you.

12 PRESIDING MEMBER PETERMAN: Well, ma'am, first of  
13 all, thank you for your comment. And I'm sorry you've been  
14 trying all day to get online, but you found us.

15 The most direct answer I can give to your question  
16 is that we are not dealing with the San Onofre facility as  
17 part of this case. Our responsibility here is to do the  
18 CEQA analysis. So the issues you've raised don't have a  
19 bearing on our decision. And so I'll generally leave it at  
20 that.

21 However, I will say that you -- make sure we  
22 connect you with the public adviser in terms of -- you know,  
23 to follow this case, if you have more questions. And also,  
24 we held a workshop, the Energy Commission held a workshop on  
25 June 22nd in Los Angeles that dealt with electricity

1 infrastructure, and particularly we talked a lot about San  
2 Onofre. And there was a presentation there by the ISO and  
3 the Public Utilities Commission. So the transcript from  
4 that workshop you may of -- of interest, as well. And I  
5 would ask that you do contact the public adviser, that she  
6 can direct you to where to find that transcript. But --

7 MS. HARRIS HICKS: All right. Do you know -- do  
8 you know whether the area that this would serve is one of  
9 the ones that -- that is lacking in the transmissions to  
10 provide energy for that particular area, San Diego, in San  
11 Diego?

12 PRESIDING MEMBER PETERMAN: I don't want to  
13 speculate to that.

14 MS. HARRIS HICKS: Is that --

15 PRESIDING MEMBER PETERMAN: So --

16 MS. HARRIS HICKS: I think that would be something  
17 that ISO would have the information. But I didn't know  
18 whether maybe you had taken that under this other -- that  
19 hearing or something, you know? But --

20 PRESIDING MEMBER PETERMAN: No. We haven't taken  
21 it up in this hearing. It's possible it was addressed to  
22 the Public Utilities Commissioner when looking at the need  
23 analysis for this project. Again, we did the environmental  
24 analysis. So this was not a part of our consideration.

25 MS. HARRIS HICKS: I see. Okay. All right. I'll

1 see what I find out then from -- through the public  
2 adviser's office. Jennifer there is the one who helped me  
3 come in today. I filed (inaudible) and I haven't gone. But  
4 anyway, I'm sorry that I took time from the rest of you  
5 for -- for my question, but it may be that it -- that it --  
6 that it will help in some way from the viewpoint of what the  
7 applicant has to do now.

8 Do you know whether the applicant has been through  
9 the California Public Utilities Commission process at all?

10 PRESIDING MEMBER PETERMAN: So I think that we can  
11 ask the applicant the question of where they are in the ISO  
12 queue and where they are with the California Public  
13 Utilities Commission.

14 MS. HARRIS HICKS: Well, anyway, thank you.

15 PRESIDING MEMBER PETERMAN: And thank you for  
16 your -- ma'am, we're going to get it -- we're going to --  
17 we're asking the applicant now for you. So hold on for an  
18 answer. And we also have -- if you contact the public  
19 adviser, I see a staff member who deals more with  
20 reliability and transmission in the audience who said that  
21 he would be able to field some of your questions, as well,  
22 for the applicant.

23 MS. HARRIS HICKS: Did you give me a name there?  
24 I just kind of struggled. I can't hear well.

25 PRESIDING MEMBER PETERMAN: Oh, I'm sorry. If

1 you -- if you contact Jennifer Jennings --

2 MS. HARRIS HICKS: Jennifer, yes.

3 PRESIDING MEMBER PETERMAN: -- right, then she can  
4 also pass on your specific question to our staff --

5 MS. HARRIS HICKS: Yes.

6 PRESIDING MEMBER PETERMAN: -- who deals more with  
7 those issues that are not being dealt with in this case.

8 MS. HARRIS HICKS: Well --

9 PRESIDING MEMBER PETERMAN: And, Applicant, can  
10 you comment on your --

11 MS. HARRIS HICKS: Oh. Okay. And may I ask you  
12 one more question? We've been trying for many years now to  
13 get a funding source for our -- putting the solar on our  
14 roofs. And it's a process of the -- of the Soroptimist  
15 Organization, ten years been trying to do this. And -- and  
16 our city is taking the advice of the -- of the Fannie Mae,  
17 Fannie whatever --

18 PRESIDING MEMBER PETERMAN: Uh-huh.

19 MS. HARRIS HICKS: -- not to do it, not to provide  
20 us the -- the 811, the AB 811 possibility. And we were  
21 wondering whether there is anything that the California  
22 Energy Commission can do to provide us a loan, funding, that  
23 we can -- where we can pay it back on our -- so that we can  
24 pay back on our taxes, the way we have on our street  
25 improvements, and then the AB 811 it provides that would

1 be --

2 PRESIDING MEMBER PETERMAN: So, ma'am, I can  
3 answer your question very succinctly, which is, no, we don't  
4 have a program of that nature now. So we don't have a  
5 replacement for the base program and similar ones. But you  
6 can find out all these solar incentive programs that state  
7 has available through the agencies at gosolar.com or  
8 gosolar.gov. I believe if you type gosolar in California  
9 you'll get a list of all of the subsidy programs. So  
10 currently --

11 MS. HARRIS HICKS: So what? What?

12 PRESIDING MEMBER PETERMAN: And that -- and ma'am,  
13 it's not a matter we're taking under as part of this  
14 proceeding. So that's the best advice I can give you on  
15 that issue at the moment.

16 MS. HARRIS HICKS: All right. Thank you again.

17 PRESIDING MEMBER PETERMAN: All right.

18 HEARING OFFICER RENAUD: Thank you.

19 PRESIDING MEMBER PETERMAN: Okay. And Applicant?

20 MR. JENKINS: Good afternoon. This is Dave  
21 Jenkins with the Pio Pico Energy Center Project team. And  
22 I'll speak generally to your question.

23 The project is well on its way in the CAISO  
24 process. And we do expect to executive agreement with them  
25 in a timely manner.

1 HEARING OFFICER RENAUD: Okay. Thank you for  
2 that. All right.

3 I don't see any other persons wishing to make a  
4 public comment at this time. We'll check again later in the  
5 evening.

6 But let's move on with our contested topics. And  
7 I think we'll take up air quality next because I suspect  
8 that will be shorter than alternatives, and we can get that  
9 one done.

10 Does any party have a direct witness they wish to  
11 call on the subject of air quality?

12 MS. FOSTER: Applicant does not.

13 MS. HARRIS HICKS: Is this going to be taken up  
14 next week?

15 HEARING OFFICER RENAUD: No, ma'am. The public  
16 comment is concluded now, and we're conducting an  
17 evidentiary hearing for --

18 MS. HARRIS HICKS: Oh, I thought you said --

19 HEARING OFFICER RENAUD: -- the Pio Pico Project.

20 MS. HARRIS HICKS: -- the air quality is going to  
21 be taken up next week.

22 HEARING OFFICER RENAUD: No.

23 MS. HARRIS HICKS: Is that -- is that right?

24 HEARING OFFICER RENAUD: No. We're doing it right  
25 now.

1 MS. HARRIS HICKS: Oh. Oh. Okay.

2 HEARING OFFICER RENAUD: Yeah. We're listening to  
3 evidence regarding the air quality impacts from the Pio Pico  
4 Project.

5 MS. HARRIS HICKS: Oh, good. Good. Okay. Thank  
6 you. I'm interested in this.

7 HEARING OFFICER RENAUD: All right. Ma'am, I  
8 should let you know that you -- we -- we appreciate your  
9 listening in, but we're not able to have --

10 MS. HARRIS HICKS: Oh, you're recording my  
11 comments.

12 HEARING OFFICER RENAUD: -- questions or comment  
13 during this. This is a formal --

14 MS. HARRIS HICKS: Okay. Thank you.

15 HEARING OFFICER RENAUD: This is a formal  
16 proceeding. We're taking testimony.

17 MS. HARRIS HICKS: Thank you.

18 HEARING OFFICER RENAUD: So you're welcome to  
19 listen, but if you would wait until the appropriate time for  
20 questions we would appreciate that.

21 MS. HARRIS HICKS: All right. Thank you.

22 HEARING OFFICER RENAUD: Thank you. Okay.  
23 Direct witnesses on air quality?

24 MS. FOSTER: Applicant submitted all of the  
25 testimony in written form for air quality. But Applicant

1 has provided two witnesses on the air quality time for  
2 cross, and reserves the right to provide rebuttal if needed.

3 Gary Rubenstein and Steve Hill are here.

4 HEARING OFFICER RENAUD: All right. And Staff,  
5 any direct testimony?

6 MR. BELL: Likewise, we submitted our testimony in  
7 writing. We do have Tao Jiang, PhD available for  
8 questioning.

9 HEARING OFFICER RENAUD: Okay. And Ms. Smith, do  
10 you have cross-examination on the air quality topic?

11 MS. SMITH: I do have cross-examination on air  
12 quality.

13 HEARING OFFICER RENAUD: Okay. And we had agreed  
14 that the -- the topics would be the monitoring station, the  
15 use of imported LNG, simultaneous operations with OMGP,  
16 meaning Otay Mesa, low load and startup emissions, localized  
17 effects of GHG, and the use of ammonia instead of urea.

18 Parties, do you -- are all your witnesses on the  
19 phone right now? Everybody's listening in or --

20 MS. FOSTER: Our --

21 HEARING OFFICER RENAUD: Oh, they're here.

22 MS. FOSTER: Our witnesses are present.

23 HEARING OFFICER RENAUD: Okay.

24 MR. BELL: As are -- as are Staff's witnesses.

25 HEARING OFFICER RENAUD: I think the best thing

1 then, Ms. Smith, is you ask a question, and then we'll  
2 figure out which witness should answer. Does that sound  
3 okay?

4 MS. SMITH: That sounds fine for me because  
5 really, therefore, every -- all the air quality witnesses,  
6 so that's perfect.

7 HEARING OFFICER RENAUD: All right. Great.

8 MS. SMITH: So I'm going to start first with  
9 monitoring stations.

10 HEARING OFFICER RENAUD: Go ahead.

11 MS. SMITH: And, actually, both Applicant and  
12 Staff for the FSA, they both failed to mention that there is  
13 an Otay Mesa Donovan Correctional Facility air pollution  
14 monitoring station. Are you aware that there is an air  
15 pollution monitoring station located at the Donovan  
16 Correctional Facility, which is approximately one mile north  
17 of the proposed site and about three or four miles north of  
18 the U.S./Mexican border?

19 MS. FOSTER: Hearing Officer Renaud, before they  
20 respond, can I request that they be sworn in?

21 HEARING OFFICER RENAUD: Yes, please. Okay. Each  
22 witness, raise your right hand. I'm going to swear you all  
23 at once.

24 (Whereupon Mr. Rubenstein, Mr. Hill, and  
25 Mr. Jiang are sworn.)

1 HEARING OFFICER RENAUD: All right. And then  
2 whoever is going to answer, you'll need to come up here to  
3 the microphone. It might be best if you just come up here  
4 now and -- and be present --

5 MS. FOSTER: And --

6 HEARING OFFICER RENAUD: -- so when you speak  
7 we'll hear you.

8 MS. FOSTER: One other item. I believe that a  
9 representative from the air pollution control district is  
10 present, as well.

11 HEARING OFFICER RENAUD: Yes. It's not -- present  
12 here in person?

13 MS. FOSTER: Yes.

14 HEARING OFFICER RENAUD: Okay. If you'd come on  
15 up too. Okay.

16 So do you all have the question?

17 And -- and your witness is on the phone then,  
18 Mr. Bell?

19 MR. BELL: He's -- he's personally present.

20 HEARING OFFICER RENAUD: Oh, I'm sorry. There you  
21 are, right there. Okay.

22 MS. SMITH: Oh, and, you know, I should just say  
23 at this time, Mr. Sarvey obviously is not going to be  
24 attending --

25 HEARING OFFICER RENAUD: All right.

1 MS. SMITH: -- the hearing today.

2 HEARING OFFICER RENAUD: Okay. Okay. Well,  
3 thanks for letting us know.

4 MS. SMITH: I did hear back from him, and I  
5 apologize for not telling you that sooner.

6 HEARING OFFICER RENAUD: That's fine. Thanks. We  
7 appreciate that.

8 MS. SMITH: Okay. You're welcome.

9 HEARING OFFICER RENAUD: Yes. Okay.

10 MR. MOORE: This is Steven Moore.

11 HEARING OFFICER RENAUD: Steven Moore. Okay. I'm  
12 going to swear you.

13 (Whereupon Mr. Moore is sworn.)

14 HEARING OFFICER RENAUD: Okay. And I'm just  
15 looking at logistics. I guess you all have a mike, so this  
16 should work. Okay.

17 So do all four of you have the question in mind,  
18 which is about what this -- the monitoring station for the  
19 correctional facility?

20 MR. RUBENSTEIN: I have the question in mind.

21 HEARING OFFICER RENAUD: Okay. So if you're going  
22 to answer the question just state -- state your name first,  
23 and then give your answer.

24 CROSS-EXAMINATION

25 MR. RUBENSTEIN: Gary Rubenstein, air quality

1 consultant for the applicant. I'm not aware of any ambient  
2 air quality monitoring station at the Donovan Correction  
3 Facility. I'm actually looking at the California Air  
4 Resources Board's website which does not provide any  
5 indication that there's any ambient air quality data  
6 collected at that location.

7 HEARING OFFICER RENAUD: Okay.

8 MS. SMITH: I'm having a hard time understanding  
9 or hearing his statement.

10 MR. MOORE: This is Steven Moore with the San  
11 Diego Air Pollution Control District. The district does  
12 have a monitoring station at the Donovan Correctional  
13 Facility. It only corrects PM-10 data, and it's only been  
14 certified since 2010.

15 MS. SMITH: Is it possible to have that monitoring  
16 station updated to collect more data?

17 MR. MOORE: Well, it's possible, but it's  
18 difficult to locate monitoring stations, and the district  
19 has limited resources. We are looking to relocate the Otay  
20 Mesa monitoring station somewhere in the area, but it  
21 probably will not be at Donovan State Prison.

22 HEARING OFFICER RENAUD: Do any of the other  
23 witnesses care to address that question?

24 And, Ms. Smith, you may have had a hard time  
25 understanding Mr. Rubenstein, but basically to summarize he

1 said he was not aware of a station there, and he was looking  
2 the ARB website and it wasn't shown there.

3 MR. RUBENSTEIN: That's correct.

4 MS. SMITH: And if he looks on the ARB website I  
5 think he would find that there.

6 And, Mr. Moore, you did say, just to clarify that  
7 you did say that -- that the Otay Mesa Donovan Correctional  
8 Facility monitor is not up to -- just doesn't have enough --  
9 it's not able to do the data that -- that they proposed?  
10 The air pollution monitor in Chula Vista does; is that  
11 correct?

12 MR. MOORE: It only collects PM-10 data at this  
13 time.

14 MS. SMITH: Okay. And then it's not possible to  
15 update it so it will monitor?

16 MR. MOORE: Well, I mean, the question of is it  
17 possible? Yes. Is it practical? Probably not.

18 MS. SMITH: Okay. And this also goes to the air  
19 quality and the monitoring stations. When you were -- and  
20 this is for everybody. When you were evaluating the -- the  
21 plant sites did you take into -- did anybody take into  
22 account that there was a juvenile correction facility  
23 approximately a mile away from the site?

24 MR. MOORE: I guess -- this is Steven Moore, San  
25 Diego APCD. You know, basically, we look at all citizens or

1 all potential receptors of emission impacts the same.

2 MS. SMITH: Okay. And again --

3 HEARING OFFICER RENAUD: Any of the other  
4 witnesses --

5 MS. SMITH: -- did any --

6 HEARING OFFICER RENAUD: -- wish to --

7 MS. SMITH: -- did anybody look at -- specifically  
8 at the East Mesa Detention Facility, juvenile -- which is a  
9 juvenile hall, and the population there when they were doing  
10 their air quality assessments?

11 MR. MOORE: It's in -- in the domain that was  
12 modeled. So the answer is, yes.

13 MS. SMITH: Okay.

14 HEARING OFFICER RENAUD: Either the applicant or  
15 staff witnesses care to address that question?

16 MR. RUBENSTEIN: This is Gary Rubenstein. No.  
17 But I would correct my earlier answer now that I looked  
18 precisely for the pollutant and the specific years that Mr.  
19 Moore mentioned, I do see that -- that monitoring station  
20 for the Donovan Facility is on the ARB website.

21 HEARING OFFICER RENAUD: All right. Thank you.

22 MS. SMITH: Along the same lines, did anybody look  
23 into the various health issues that the population of both  
24 George Bailey -- the prison population of both George Bailey  
25 and Donovan?

1           MR. MOORE: We did not look at specific health  
2 issues there. Basically, we go by standards that are  
3 promulgated by both the state, the district, and the federal  
4 government that ensure that impacts are valued with a  
5 significant margin of safety for the entire population,  
6 including sensitive individuals.

7           MS. SMITH: And are you aware that there may be  
8 sensitive individuals at -- at George Bailey Facility?

9           MR. BELL: At this time I have to impose an  
10 objection, and that is it's beyond the scope of cross-  
11 examination as allowed. There's -- this isn't a permitted  
12 topic.

13           MS. SMITH: This goes to the general air quality  
14 issue and the -- the impact, I mean, not only the greenhouse  
15 gas effects, but also, I mean, everything in general. I  
16 mean, this definitely is right on top of what we were  
17 permitted to ask.

18           HEARING OFFICER RENAUD: I have to agree with Mr.  
19 Bell that it's not among the listed areas of scope. But I  
20 think it's of interest to the committee, as long as you can  
21 wrap up fairly quickly.

22           MS. SMITH: Yeah. I just have --

23           HEARING OFFICER RENAUD: Go ahead.

24           MS. SMITH: -- just one more quick question on  
25 that.

1           Did you guys look at Donovan State Prison's  
2 population to determine whether there were any sensitive  
3 individuals housed there, who may be housed there for their  
4 entire life?

5           MR. MOORE: We did not specifically look there to  
6 see if there were sensitive individuals.

7           HEARING OFFICER RENAUD: Would either the staff or  
8 the applicant witnesses care to address these questions that  
9 have been answered by Mr. Moore the last few times?

10          MR. JIANG: I believe -- I believe this is a  
11 public health question, so we have to stop here.

12          HEARING OFFICER RENAUD: Okay. That was Tao  
13 Jiang.

14          MR. JIANG: No. I'm air quality. Yes, Tao Jiang  
15 for air quality.

16          HEARING OFFICER RENAUD: For air quality, right.

17          MR. JIANG: Yes.

18          HEARING OFFICER RENAUD: Okay. And Applicant, do  
19 you have anything?

20          MR. RUBENSTEIN: Gary Rubenstein for the  
21 applicant. Again, I'd just echo what Mr. Moore said  
22 earlier, which is that our analyses have to ensure that the  
23 air quality impacts would not exceed air quality levels at  
24 any location, including the prison, and particularly  
25 directed at sensitive individuals.

1           MR. BELL: And I would also refer the committee to  
2 the supplement to the FSA where staff indicated that we  
3 assumed sensitive receptor in our analysis.

4           HEARING OFFICER RENAUD: I understand. All right.  
5 Thank you. Okay. Next question.

6           MS. SMITH: We're going to go on to the  
7 simultaneous operation with the OMPG. On -- this is  
8 directed to the staff, Dr. Jiang. On page 5.3-7 in the FSA  
9 you claim that there is no cumulative impact that would  
10 exist when this plant is in operation; is that correct?

11          MR. JIANG: I'm sorry. Can I have you repeat the  
12 question?

13          MS. SMITH: Oh. On page --

14          MR. JIANG: On what page?

15          MS. SMITH: -- 5.3-7 of your -- of the FSA you  
16 claim that there is not going to be any cumulative impact  
17 that would exist when this plant is in operation.

18          MR. JIANG: Significant cumulative impact. No.

19          MS. SMITH: I'm sorry. I missed that.

20          MR. JIANG: No significant cumulative impact.

21          MR. BELL: I'm sorry. What -- what page are we  
22 talking about here, 5.3-7?

23          MS. SMITH: Oh, 5.3-7, I believe is where I was.

24          MR. BELL: I would note that that is under power  
25 plant efficiency, not under air quality.

1 MS. SMITH: Oh, and I am -- I'm sorry. I -- I  
2 didn't want that page.

3 HEARING OFFICER RENAUD: Air quality is 4.1.

4 MS. SMITH: Thank you. I'm looking at this on my  
5 computer. I apologize. During -- well, we'll just -- I'll  
6 get back to that. I have to find that page that I was  
7 referring to.

8 However, you did -- you did state that there would  
9 be no cumulative impacts; correct?

10 MR. JIANG: What I said is no significant  
11 cumulative impact from this project.

12 MS. SMITH: I had -- I am unable to hear what he  
13 said. Is it possible, is there a speaker that he could --  
14 or a microphone that he could be speaking into?

15 HEARING OFFICER RENAUD: Okay. Well, I just  
16 changed something. We'll see if that's better. But he's --  
17 he's -- he's saying that there's no significant impact.  
18 He's adding the word "significant."

19 MS. SMITH: Okay. Let's move on to the ammonia,  
20 then we'll jump to that. You all agree that acquiesce  
21 ammonia is considered a hazardous chemical; correct?

22 MR. RUBENSTEIN: This is Gary Rubenstein. That's  
23 not really an air quality question.

24 HEARING OFFICER RENAUD: The topic --

25 MS. SMITH: I believe we were allowed to discuss

1 that with the -- or the ammonia was going to be part of the  
2 air quality cross.

3 HEARING OFFICER RENAUD: Yes, the use of ammonia  
4 versus urea, instead of urea --

5 MS. SMITH: Correct.

6 HEARING OFFICER RENAUD: -- in the -- in the  
7 process.

8 MS. SMITH: Okay. Are you aware of a process  
9 that -- where you can use urea instead of acquiesce ammonia?

10 MR. JIANG: Urea is not in my testimony. So we  
11 only studied the ammonia. And we made sure ammonia can  
12 provide sufficient mitigation for the process, so we accept  
13 the proposal. And it would be usual for this, as long as it  
14 can find sufficient mitigation.

15 MS. SMITH: So -- so, again, you're saying you  
16 just -- you addressed the ammonia issues, not any -- you did  
17 not look at any use of urea; correct?

18 MR. JIANG: No. It's not in my testimony.

19 MS. SMITH: Okay. Again, I apologize. I'm having  
20 a very difficult time hearing him.

21 MR. JIANG: Urea is not in my testimony. We only  
22 studied -- I only covered the ammonia in my testimony.

23 MS. SMITH: You don't -- you're saying you  
24 didn't -- you didn't state anything on ammonia in your  
25 testimony?

1 HEARING OFFICER RENAUD: Yes, that's what he's  
2 saying.

3 PRESIDING MEMBER PETERMAN: No, no, no.

4 ASSOCIATE MEMBER DOUGLAS: No.

5 HEARING OFFICER RENAUD: No?

6 PRESIDING MEMBER PETERMAN: No.

7 HEARING OFFICER RENAUD: Wait a minute.

8 MS. SMITH: And just -- just --

9 HEARING OFFICER RENAUD: No, no, I'm sorry. I  
10 missed -- I --

11 MS. SMITH: -- was that in your testimony?

12 HEARING OFFICER RENAUD: Let's back up here. He  
13 did not discuss urea in his testimony.

14 MS. SMITH: Okay. That's -- okay. That's --  
15 thank you. You did not discuss it.

16 Are you aware that there is technology available  
17 that you could use urea instead of using the acquiesce  
18 ammonia?

19 MR. JIANG: I know there -- this is option. But  
20 as far as ammonia can provide sufficient mitigation and  
21 which makes the project below the county standard, very  
22 unusual.

23 HEARING OFFICER RENAUD: Were you able to  
24 understand that?

25 MS. SMITH: No.

1 HEARING OFFICER RENAUD: All right.

2 MS. SMITH: I'm sorry.

3 HEARING OFFICER RENAUD: That's all right. That's  
4 all right.

5 Why don't you come over here and speak right into  
6 the phone and, if you wouldn't mind, that would just make it  
7 clear for her.

8 MS. SMITH: Thank you.

9 MR. JIANG: In my testimony I didn't discuss urea.  
10 And I know this is an option. But as long as the ammonia  
11 can provide sufficient mitigation for this project Staff is  
12 neutral for which options they choose. That's Applicant's  
13 choice.

14 MS. SMITH: But there is a potential for ammonia  
15 slip; correct?

16 MR. JIANG: Yes.

17 MS. SMITH: And using urea would reduce that  
18 potential; correct?

19 MR. JIANG: That's not in my testimony. I can not  
20 give you answer.

21 MS. SMITH: Okay. Thank you. That's -- that's  
22 all I have on the topic of ammonia at this point.

23 HEARING OFFICER RENAUD: Thank you. Okay.  
24 Anything else on air quality?

25 MS. SMITH: I -- if I could have just a second

1 here.

2 HEARING OFFICER RENAUD: Sure.

3 MS. SMITH: Actually, going to the startup  
4 emissions' issues, startup emissions will be a significant  
5 contribution to the overall annual emissions of -- for --  
6 for the PPEC plant; correct?

7 MR. JIANG: Yes. Startup emissions is normally  
8 higher than the normal operation emissions.

9 MS. SMITH: And --

10 MR. BELL: I believe you also had an answer coming  
11 from the applicant's witness as well.

12 MS. SMITH: Okay.

13 MR. RUBENSTEIN: I believe the question was  
14 whether startup emissions are a significant element. And I  
15 believe Staff's witness indicated that it was an element,  
16 that it's higher, and that's correct. It is an element of  
17 the annual emissions. Whether it's significant or not  
18 depends on how quickly the plant starts up.

19 MS. SMITH: Okay. And you're basing your  
20 emissions -- your startup emissions analysis on 500 hours  
21 per year startup -- startup and shutdown time; is that  
22 correct?

23 MR. RUBENSTEIN: Gary Rubenstein. Up to 500 hours  
24 per year, that's correct.

25 MS. SMITH: Okay.

1 MR. RUBENSTEIN: Excuse me. Excuse me. Up to 500  
2 startups per year.

3 MS. SMITH: Five hundred startups a year?

4 MR. RUBENSTEIN: Correct.

5 MS. SMITH: And it takes -- and then the GELMS 100  
6 a year, you're stating that that's going to take about 10  
7 minutes about to start up; is that correct?

8 MR. RUBENSTEIN: As a worst case -- Gary  
9 Rubenstein again. As a worst case we assume that a startup  
10 could last up to 30 minutes. The turbine would be in full  
11 load within approximately ten minutes. But to be  
12 conservative we assume that for all the emissions controls  
13 to become fully operational it could last up to 30 minutes  
14 per startup.

15 MS. SMITH: Okay. So you're looking at a 30-  
16 minute startup, 500 startups per year. And it takes  
17 approximately 11 minutes to 20 minutes to shut down the --  
18 the turbines as well; correct?

19 MR. HILL: This is Steve Hill with the applicant.  
20 Yes, it's an 11-minute shutdown period that the emissions  
21 are elevated.

22 MS. SMITH: Okay. So you're looking at 41 minutes  
23 with no emissions controls; is that correct?

24 MR. RUBENSTEIN: This is Gary Rubenstein. No,  
25 that's not correct.

1 MS. SMITH: That's not correct? So if it takes 30  
2 minutes to -- it will take 30 minutes to start it up;  
3 correct?

4 MR. RUBENSTEIN: It will take up to 30 minutes for  
5 the unit to reach full load and have all the emission  
6 controls fully operational.

7 MS. SMITH: Okay. And when it's shutting down  
8 it's 11 minutes, and the emission controls are not fully  
9 operational; correct?

10 MR. RUBENSTEIN: It's 11 minutes, and the  
11 emissions controls are not fully operations. That's  
12 correct.

13 MS. SMITH: Is there -- are you aware of any  
14 similar technology that would increase the startup time and  
15 decrease the emissions?

16 MR. RUBENSTEIN: I'm thinking. There may be  
17 something out there that might do that. I'm not -- nothing  
18 is coming to mind at the moment.

19 MS. SMITH: Okay. Are you aware of the ramp rate  
20 for the Encina Boiler Project Plant's turbines?

21 MR. RUBENSTEIN: This is Gary Rubenstein again.  
22 Yes, I am.

23 MS. SMITH: Okay. And are you aware of the ramp  
24 rates for the Otay Mesa Generating Plant's turbines?

25 MR. RUBENSTEIN: In general terms, yes.

1 MS. SMITH: Okay. The -- what -- what are the --  
2 for -- for say -- well, we'll just talk about Boilers 4  
3 through 5, what are the ramp rates for the -- the boilers at  
4 the Encina plant?

5 MR. RUBENSTEIN: You mean from a cold start?

6 MS. SMITH: From a cold start.

7 MR. RUBENSTEIN: No. I believe that from a cold  
8 start it takes many, many hours. And I'm not aware of --  
9 it's certainly not less than eight hours. It could be as  
10 much as 24 hours for Boilers 4 and 5 to come up to full  
11 load.

12 MS. SMITH: And are you aware how long it will  
13 take -- how long it takes the single combine cycle -- or  
14 excuse me, single-combined cycle turbine at the Otay Mesa  
15 Generating Plant to start up for the ramp rates?

16 MR. RUBENSTEIN: I believe for those units at a  
17 cold start, when they were originally licensed it was up to  
18 180 minutes. Dr. Moore may have some more up-to-date  
19 information of different modifications at that facility.

20 MS. SMITH: Okay.

21 MR. BELL: At this time I'd like to interpose an  
22 objection to this line of questioning. We're talking about  
23 the Encina facility which is an over 960 megawatt base load  
24 facility. It's not a peaker. It's like comparing apples to  
25 oranges right here. It's not relevant to the Pio Pico

1 Energy Generating Center.

2 MS. FOSTER: Applicant concurs with the objection.

3 HEARING OFFICER RENAUD: Okay. I understand that.  
4 But if you'll just let us know where you're going with this,  
5 Ms. Smith, we'd appreciate it.

6 MS. SMITH: I was trying to get a base of the  
7 startup times on -- on this particular proposed project  
8 versus two projects that are already in use in San Diego,  
9 the 1,000 megawatt at Encina, and then the Otay Mesa  
10 Plant --

11 HEARING OFFICER RENAUD: Yeah. And --

12 MS. SMITH: -- which is a similar size, I believe.

13 HEARING OFFICER RENAUD: All right. And so you  
14 have a question pending regarding Otay Mesa, I believe,  
15 which hasn't been answered yet. We'll -- we'll allow the  
16 answer to that, and see where we go from there.

17 MS. SMITH: Am I going to get an answer to that?

18 HEARING OFFICER RENAUD: Dr. Moore is looking.

19 MR. MOORE: I'm looking --

20 MS. SMITH: Oh. Oh, okay.

21 MR. MOORE: -- at the Palomar permit. I don't  
22 have the Otay Mesa -- but I believe it's similar -- in front  
23 of me. You know, if you want to move on I can keep looking  
24 here and get back to you.

25 MS. SMITH: Okay. Let's go to greenhouse gasses.

1 That's always a fun topic. Are you aware or familiar with  
2 the Jacobson Effect?

3 MR. RUBENSTEIN: This is Gary Rubenstein. Yes,  
4 I'm familiar with the papers that Dr. Jacobson has written.

5 MS. SMITH: And did you include that in your -- in  
6 the FSA during your analysis.

7 MR. RUBENSTEIN: This is Gary Rubenstein. I  
8 didn't prepare the FSA. And, no, I didn't address that in  
9 the application for certification.

10 MS. SMITH: You did?

11 MR. RUBENSTEIN: I did not.

12 MS. SMITH: You did not include that in that.

13 Okay. I believe --

14 HEARING OFFICER RENAUD: Perhaps we should ask --

15 MS. SMITH: -- let's see --

16 HEARING OFFICER RENAUD: -- Staff the same  
17 question about including the Jacobson Effect in the -- in  
18 the FSA. Dr. Jiang?

19 MR. JIANG: Yes, this is Tao Jiang. Can you  
20 please repeat your question?

21 HEARING OFFICER RENAUD: Dr. Jiang would like to  
22 hear that question again.

23 MS. SMITH: Are you familiar with the Jacobson  
24 Effect?

25 MR. JIANG: Sorry, no. However, the effect is not

1 covered in the greenhouse gas analysis. It's not covered in  
2 my testimony.

3 MS. SMITH: You did not include that analysis in  
4 your testimony?

5 MR. JIANG: No. We only studied the global  
6 climate -- climate change effect from the greenhouse gas  
7 emissions. We did not study any other effects.

8 MS. SMITH: Okay. Give me just a second here.

9 Do we have an answer to --

10 MR. MOORE: Yes. The Palomar Facility, the  
11 startup time is -- is actually 120 minutes, two hours if  
12 it's warm, and 360 minutes when it's cold, so six hours.

13 MS. SMITH: All right. Give me a second here.  
14 These are directed towards the district. I believe in  
15 your -- in a preliminary -- in a PDOC that there were some  
16 comments that were made, and then you submitted a final doc,  
17 an FDOC; is that correct?

18 MR. MOORE: That's correct.

19 MS. SMITH: Okay. And I just have some questions  
20 about the PSD. So won't a water injection -- won't the  
21 water injection for the GELMS 100 produce steam by heat  
22 transfer?

23 MR. BELL: Again, I have to object. This is  
24 outside the scope of the cross-examination topics. And  
25 so --

1 HEARING OFFICER RENAUD: Well, I would agree with  
2 that normally. But Dr. Moore is here to sponsor the FDOC  
3 and everything that's in it. So I think the parties are  
4 entitled to ask questions about that.

5 MR. BELL: Okay.

6 HEARING OFFICER RENAUD: Thanks. We're kind of  
7 blending those two activities at this point because Ms.  
8 Smith is on the line and he's standing there, so --

9 MR. BELL: Thank you.

10 HEARING OFFICER RENAUD: Okay. Go ahead.

11 MS. SMITH: Thank you.

12 MR. MOORE: We would not consider producing steam  
13 within the meaning of a steam and electrical generation  
14 plant, no.

15 MS. SMITH: Okay. Will the -- won't the  
16 evaporator coolers also produce steam by heat transfer, or  
17 will they produces steam by heat transfer?

18 MR. MOORE: They produce water vapor, which we do  
19 not consider steam in the context of whether it's an  
20 electrical generating utility using steam.

21 MS. SMITH: Will the partial-dry cooling system  
22 produce steam by heat transfer?

23 MR. MOORE: Same answer.

24 MS. SMITH: Okay. So the calculations that you --  
25 that you have for the PSD, you -- you contend that those are

1 correct?

2 MR. MOORE: I do. I mean, I know where you're  
3 going. Basically, there's a different level of emissions  
4 for power plants using steam and those that don't. But even  
5 if you did consider the -- the items you mentioned, the  
6 steam generating would not affect the determination that PSD  
7 and rules is not applicable because they do not exceed 100  
8 tons of emissions.

9 MS. SMITH: Okay.

10 MR. MOORE: The facility does not exceed 100 tons.

11 MS. SMITH: At this time I -- did anybody know the  
12 ramp rates for the Otay Mesa Generating Project when it's  
13 hot, not cold?

14 MR. MOORE: I don't have a certain answer for  
15 that. I suspect it's the same as the Palomar Facility.

16 MR. RUBENSTEIN: This is Gary Rubenstein. I  
17 believe when that plant was new a hot start would take up to  
18 either 60 or 90 minutes on that -- on those units.

19 MS. SMITH: A hot start will take 60 to 90  
20 minutes?

21 MR. RUBENSTEIN: That's correct.

22 MS. SMITH: And on the -- on the Encina Project, I  
23 realize this is much bigger, a hot start on that, what would  
24 that take, approximately?

25 MR. MOORE: All right you talking about he Encina

1     boilers?

2                   MS. SMITH:   Correct.

3                   MR. MOORE:   I don't know.   That would have to be  
4     investigated.

5                   MS. SMITH:   Okay.   I believe that is what I have  
6     available right now for the air quality.   That's all.

7                   HEARING OFFICER RENAUD:   All right.   Thank you  
8     very much.

9                   Any other parties have questions on air quality?

10                  MS. FOSTER:   No, Applicant does not.

11                  MR. BELL:    None on behalf of staff.

12                  HEARING OFFICER RENAUD:   Okay.   Thank you,  
13     witnesses.   All right.

14                  And that moves on -- then we move on to -- oh, you  
15     know what, don't -- well, don't go away, Dr. Moore.   There's  
16     this formality where you sponsored the -- the -- you called  
17     the air quality witness to sponsor the FDOC.

18                  MR. MOORE:   Yes.

19                  HEARING OFFICER RENAUD:   And so if you will go  
20     through that --

21                  MR. MOORE:   Yes.

22                  HEARING OFFICER RENAUD:   -- we'll have that out of  
23     the way.

24                  MR. MOORE:   Yes.

25                  MR. BELL:    Thank you very much.

1 CROSS-EXAMINATION

2 MR. BELL: Mr. Moore, did you -- are you familiar  
3 with the PDOC and FDOC with respect to the Pio Pico Energy  
4 Center?

5 MR. MOORE: I am.

6 MR. BELL: And how are you so familiar with that?

7 MR. MOORE: Yes, I am.

8 MR. BELL: No. How are you --

9 MR. MOORE: Oh. Oh.

10 MR. BELL: -- familiar with that?

11 MR. MOORE: I'm very familiar with that.

12 MR. BELL: In what way? Did you help draft those  
13 documents?

14 MR. MOORE: I helped draft it, yes.

15 MR. BELL: Have you read reviewed and considered  
16 those documents?

17 MR. MOORE: I have.

18 MR. BELL: And at this time can you say that  
19 everything in those documents are true and correct to the  
20 best of your knowledge?

21 MR. MOORE: Yes.

22 HEARING OFFICER RENAUD: Okay. Thank you. Okay.  
23 Questions? All right.

24 Let's move then to alternatives. Applicant, do  
25 you have any direct witnesses?

1 MS. FOSTER: Applicant does not. We submitted a  
2 declaration testimony related to alternatives.

3 HEARING OFFICER RENAUD: Okay. Staff, direct  
4 witness?

5 MR. BELL: No direct. And at this time we've  
6 submitted Staff testimony, both from the FSA, as well as in  
7 the form of surrebuttal testimony. Staff does have general  
8 and specific objections to the testimony being offered by  
9 Intervener Simpson.

10 HEARING OFFICER RENAUD: To the rebuttal or the  
11 sur surrebuttal?

12 MR. BELL: Both.

13 HEARING OFFICER RENAUD: Both. All right. What  
14 is your objection to the testimony?

15 MR. BELL: The general objection with the  
16 testimony is this testimony was filed on July 6th, the date  
17 set for rebuttal testimony. It is, in fact, not rebuttal  
18 testimony. It is Mr. Simpson's opening testimony with  
19 respect to alternatives. There's nothing within that  
20 testimony that rebuts anything that Staff has offered or  
21 that the applicant has offered. It's couched in terms of  
22 rebuttal, but it is not.

23 This opening testimony came later in the -- in  
24 the -- in the game. Had Staff had access to this testimony  
25 on the date that opening testimony was due we would have

1 filed rebuttal testimony, which Staff has done in the form  
2 of surrebuttal testimony, if in the event that Staff's  
3 objections are overruled and the testimony is admitted. But  
4 Staff's general objection to this opening testimony of Mr.  
5 Simpson is that it's been entitled rebuttal testimony, which  
6 it is not.

7 HEARING OFFICER RENAUD: Well, before you respond,  
8 Ms. Smith, let me pose a question to Mr. Bell.

9 Mr. Bell --

10 MR. BELL: Yes?

11 HEARING OFFICER RENAUD: -- if -- if someone were  
12 to respond to your argument by saying that the staff  
13 testimony is about alternatives and discusses, among other  
14 things, alternative generation technologies, and Mr.  
15 Powers -- if Dr. Powers were to come back and say that his  
16 material responds to that, how would you react?

17 MR. BELL: I would say that it's not -- his  
18 material talks about the need, the need for Pio Pico, and  
19 gives examples of why it's not needed. As the community is  
20 well aware, the commission doesn't do a needs-based analysis  
21 in our -- in our licensing process. We don't determine the  
22 need. The market determines the need. Everything in Mr.  
23 Powers's testimony can fairly be said to go towards the need  
24 of Pio Pico Energy Center, not -- not whether or not the  
25 alternatives truly have been fairly vetted.

1           Based on what we have in front of us, which is  
2 the -- the -- just the basic goals of the project, you can't  
3 say that the alternative rooftop solar fits within those  
4 project basic objectives, which is to provide fast-start  
5 peaking generation. The two are not -- are not equivalent.

6           HEARING OFFICER RENAUD: Okay. Thank you. Let's  
7 let Ms. Smith respond to the objection. Do you have a  
8 response?

9           MS. SMITH: I do have a response, absolutely.

10          HEARING OFFICER RENAUD: Okay.

11          MS. SMITH: I believe that Mr. Powers's testimony  
12 is a rebuttal to the FSA. It specifically addresses a no-  
13 project alternative analysis, which is severely lacking in  
14 the FSA. The no-project alternative analysis just states  
15 that there's no viable alternative. And Mr. Powers's  
16 testimony speaks to that and says, no, there is viable  
17 alternatives. And so we should be allowed to submit this  
18 evidence and have Mr. Powers testify as to the viable no-  
19 project alternative alternative.

20          HEARING OFFICER RENAUD: All right. Well, I'm  
21 going to overrule the objection. I did -- I think Mr.  
22 Bell's point is well taken, that -- that this material could  
23 well have been submitted with the opening testimony, and  
24 that, in fact, the intervener is using our offer of the  
25 ability to provide rebuttal testimony as -- as a way to

1 bring in testimony at the last minute. But we're -- we're  
2 reluctant at the Energy Commission to exclude anything that  
3 could have any bearing on the proceeding. And as long as it  
4 doesn't take up undue amounts of time and is -- has --  
5 has -- has a reasonable degree of relevance to the  
6 proceeding we will allow it.

7 Now, today we were handed a series of pages of a  
8 PowerPoint by Mr. Powers which had not -- was not submitted  
9 to the parties previously, as far as I know.

10 MS. SMITH: Right.

11 HEARING OFFICER RENAUD: Yes.

12 MS. SMITH: It has been now. I did email that  
13 this afternoon.

14 HEARING OFFICER RENAUD: So -- so that was emailed  
15 today?

16 MS. SMITH: Correct.

17 HEARING OFFICER RENAUD: And I'm quite concerned  
18 about that. Ms. Smith, why -- why should I allow that to  
19 be -- to come in? Nobody's had -- nobody had any  
20 opportunity whatsoever to -- to see this in advance.

21 MS. SMITH: This is offered as a surrebuttal to  
22 the surrebuttal. It's our -- it's our response to the  
23 staff's and applicant's -- or actually to Staff's  
24 surrebuttal testimony.

25 HEARING OFFICER RENAUD: When was it prepared?

1 MS. SMITH: And that should --

2 HEARING OFFICER RENAUD: When was it prepared?

3 MS. SMITH: This -- well, let's see. We received  
4 the surrebuttal testimony, I believe, what was that, four  
5 days ago?

6 HEARING OFFICER RENAUD: Uh-huh. Yeah.

7 MS. SMITH: And so it was prepared within the last  
8 four days.

9 HEARING OFFICER RENAUD: So this -- this did not  
10 exist prior to that time?

11 MS. SMITH: No, it did not.

12 HEARING OFFICER RENAUD: Well --

13 MS. FOSTER: Applicant has not seen the testimony  
14 that was provided today that you are referring to. We did  
15 not receive a hard copy or -- I have not been able to check  
16 my emails so I don't know if I have it in email.

17 HEARING OFFICER RENAUD: Yeah. I --

18 MS. SMITH: And it will --

19 HEARING OFFICER RENAUD: Go ahead.

20 MS. SMITH: It will be in the email. I would  
21 propose that if -- if the committee will allow Mr. Powers to  
22 make a copy of that for people we could provide that to you  
23 all.

24 HEARING OFFICER RENAUD: Hold on one moment  
25 please.

1 MS. SMITH: Okay.

2 (Colloquy Between Hearing Officer and Committee  
3 Members)

4 HEARING OFFICER RENAUD: Okay. Let's -- let's  
5 take a brief break while the committee considers the -- the  
6 document that was provided today. And then we'll come back  
7 and take up the topic of alternatives. A five minute break.  
8 (Off the Record From 6:25 p.m., Until 6:32 p.m.)

9 HEARING OFFICER RENAUD: Okay. The -- the  
10 committee considered the document that was presented today  
11 entitled "Surrebuttal Testimony," dated July 23rd, and has  
12 decided not to admit this -- this document. This is a 27-  
13 page document, very wordy. I understand it is -- that it  
14 may be presented as a PowerPoint type of presentation.

15 The concern the committee has is that -- is that  
16 this was just provided today, and that the parties haven't  
17 seen it. They haven't had a chance to review it or prepare  
18 for it, and it's -- it's very lengthy. It also appears that  
19 it largely contains information that could have been  
20 provided much sooner in the process.

21 So while -- while we're reluctant generally to  
22 exclude anything, we're not going to admit this into the  
23 evidentiary record. It will -- it can be submitted as  
24 comment and will be a part of the docket for this  
25 proceeding. But as far as this being part of the

1 evidentiary record, that's -- that's denied.

2           If there's any -- if I can provide any  
3 consolation, there will be an opportunity for cross-  
4 examination of the testimony of David Vidaver, which -- to  
5 which this was intended to be surrebuttal -- sur  
6 surrebuttal. So I think we'll be able to cover much of the  
7 same ground. Okay.

8           So let's -- let's go from there and proceed with  
9 alternatives. First of all, Ms. Smith, did you have any  
10 cross-examination of any of the staff or applicant  
11 witnesses?

12           MS. SMITH: Yes, I did.

13           HEARING OFFICER RENAUD: All right. Do you know  
14 which one, or shall we just have them all listen to your  
15 questions like we did with -- with air?

16           MS. SMITH: We -- we could just have them all  
17 listen and then have them answer individually.

18           HEARING OFFICER RENAUD: All right. Thank you.

19           MS. SMITH: That's fine.

20           HEARING OFFICER RENAUD: Okay. So are all the  
21 staff and applicant witnesses on alternatives listening  
22 somewhere?

23           MR. BELL: Yes. Staff's witnesses are both  
24 present.

25           MS. SMITH: And I would ask, since it appears that

1 you're going to allow the testimony, the late testimony of  
2 David Vidaver, that Mr. Powers be allowed to -- we'd be  
3 allowed to present him to rebut some of that testimony  
4 orally today.

5 HEARING OFFICER RENAUD: Well, again, Mr. Powers  
6 is going to have an opportunity to provide his rebuttal  
7 testimony that was submitted earlier. And there will be an  
8 opportunity to cross examine the testimony of David Vidaver.

9 So I think between the two you're going to be able to cover  
10 what you want to cover.

11 MS. SMITH: Okay. And will there also be an  
12 opportunity for us to do a cross-examination of, I believe  
13 it's the -- the offer of the SDG&E letter --

14 HEARING OFFICER RENAUD: Well, that's -- that's  
15 another --

16 MS. SMITH: -- Jack --

17 HEARING OFFICER RENAUD: That's another subject.  
18 And --

19 MS. SMITH: Okay.

20 HEARING OFFICER RENAUD: -- as long as you've  
21 raised that, maybe we should bring that up.

22 Staff, you have submitted a document, which is a  
23 letter from SDG&E, marked for identification as Exhibit 130.

24 (Colloquy Between Hearing Officer Renaud and Presiding  
25 Commissioner Peterman)

1 HEARING OFFICER RENAUD: Were you intending to  
2 offer that in to evidence?

3 MS. FOSTER: Yes. We provided the letter as  
4 Exhibit 130.

5 HEARING OFFICER RENAUD: All right. And  
6 Ms. Smith, do you object to that letter?

7 MS. SMITH: We do object to that, if we're not  
8 allowed to cross examine the -- the author of that letter.  
9 Yes.

10 HEARING OFFICER RENAUD: What is the objection,  
11 other than that?

12 MS. SMITH: That it's untimely filed. We did not  
13 receive this until, I believe it was late --

14 HEARING OFFICER RENAUD: All right.

15 MS. SMITH: -- Friday, Thursday or Friday.

16 HEARING OFFICER RENAUD: Will the author of the  
17 letter be here?

18 MS. SMITH: We did not have an opportunity to  
19 prepare a rebuttal to that testimony.

20 HEARING OFFICER RENAUD: Is the author of the  
21 letter present?

22 MS. FOSTER: The author of the letter is present.

23 HEARING OFFICER RENAUD: Would he be able to  
24 answer questions regarding it?

25 MS. FOSTER: Yes, he will.

1 MS. SMITH: So he will be presented for cross-  
2 examination?

3 HEARING OFFICER RENAUD: Yes.

4 MS. SMITH: Okay. I would allow -- or object to  
5 not allowing Mr. Powers to -- to make an oral -- or have  
6 oral testimony today. He's --

7 HEARING OFFICER RENAUD: He does --

8 MS. SMITH: He did present written testimony.

9 HEARING OFFICER RENAUD: He does have the  
10 opportunity. He has -- he has -- he will be -- he has the  
11 opportunity to provide oral testimony as his --

12 MS. SMITH: Okay.

13 HEARING OFFICER RENAUD: -- as his rebuttal that  
14 he submitted July 6th; right? And that's what we're getting  
15 to. What -- what we're -- what we're not allowing today is  
16 the document that was provided today, the 27-page document  
17 that you emailed today to the parties. Okay? Just so  
18 that's clear. We're -- we're not excluding Mr. Powers from  
19 testifying entirely. We're -- he's going -- he'll be able  
20 to testify regarding the materials that were submitted as  
21 his rebuttal testimony on July 6th. Okay?

22 MS. SMITH: And will he be allowed to testify as  
23 to any information that Mr. Vidaver would add to the cross-  
24 examination to surrebut Mr. Vidaver's cross-examination  
25 today? That what we're getting at. Since Mr. Vidaver is

1 being offered as a witness to rebut Mr. Powers's testimony,  
2 we think it would only be fair for Mr. Powers to be allowed  
3 to --

4 HEARING OFFICER RENAUD: Well, let's keep it --

5 MS. SMITH: -- to offer that, to offer additional  
6 rebuttal testimony.

7 HEARING OFFICER RENAUD: I understand that.  
8 You'll be able -- you'll have the opportunity to question  
9 Dr. Vidaver and --

10 MR. VIDAVER: You just promoted me well beyond  
11 my --

12 HEARING OFFICER RENAUD: Okay. Sorry, Mr.  
13 Vidaver.

14 MS. SMITH: Vidaver, excuse me.

15 HEARING OFFICER RENAUD: Yes. You'll have the  
16 opportunity to question him. And if it appears after that,  
17 that it would be useful to the committee to hear further from  
18 Mr. Powers we'll do that, too. But I'm going to -- I'm not  
19 going to provide you a yes or no on that right now.

20 MS. SMITH: Okay.

21 MR. BELL: Mr. Renaud, if I could, one of the  
22 reasons why Staff filed that ahead of time instead of  
23 handling it through the hearing was so that all parties and  
24 the committee would be apprised of Staff's position ahead of  
25 time and wouldn't be surprised by anything. We wanted to be

1 as up front as possible about our position so that if the --  
2 any of the interveners or any of the parties could respond  
3 to Staff's position.

4 HEARING OFFICER RENAUD: And that's exactly --

5 MS. SMITH: If I may speak --

6 HEARING OFFICER RENAUD: -- what we're talking  
7 about here, and we're trying to be fair without, you know,  
8 doing anything --

9 MS. SMITH: I --

10 HEARING OFFICER RENAUD: -- prejudice.

11 MS. SMITH: If I may speak. I mean, Mr.  
12 Vidaver -- Vidaver's testimony was filed four days ago. So  
13 it hasn't -- we had just enough time to -- to respond to his  
14 testimony. I mean, that's -- we didn't have any more time.  
15 We had just the weekend.

16 HEARING OFFICER RENAUD: Right. Let's -- I  
17 understand where everybody's positions are. I think we're  
18 handling this in a fair manner. And I'd like to go ahead  
19 and start hearing some evidence here. Okay? Let's stop  
20 having lawyers' talk. Okay.

21 I think the first order of business then would be  
22 the cross-examination by Ms. Smith. And why don't you  
23 proceed?

24 MS. SMITH: Okay. Have we sworn in the witnesses?

25 HEARING OFFICER RENAUD: Let's -- okay. Tell me

1 who the are. We've got David Vidaver.

2 MR. BELL: And Eric Solorio.

3 HEARING OFFICER RENAUD: Eric Solorio. Eric has  
4 been sworn. Okay.

5 Applicant, who do you have?

6 MS. FOSTER: Applicant has David Jenkins.

7 HEARING OFFICER RENAUD: Okay. That's it. Okay.

8

9 Two Davids, raise your right hands.

10 (Whereupon Mr. Vidaver and Mr. Jenkins are sworn.)

11 HEARING OFFICER RENAUD: All right. Everybody's  
12 been sworn.

13 MS. SMITH: That's it?

14 HEARING OFFICER RENAUD: I swore you in; right,  
15 Eric?

16 MR. SOLORIO: Yeah.

17 HEARING OFFICER RENAUD: I thought so.

18 MR. SOLORIO: Yes.

19 ASSOCIATE MEMBER DOUGLAS: That was traffic.

20 HEARING OFFICER RENAUD: Yeah.

21 CROSS-EXAMINATION

22 MS. SMITH: So -- and this is just going to be --  
23 I guess I'm just going to ask this as a general question to  
24 all of you. None of you during your analysis considered any  
25 kind of rooftop solar as a no-project alternative; correct?

1 HEARING OFFICER RENAUD: If you're going to answer  
2 the question just state your name first, and then proceed.

3 MR. SOLORIO: This is Eric Solorio. I think you  
4 said two different things there. One was did any of us  
5 consider the no-project alternative. And then you also said  
6 rooftop solar, which I think are two different things.

7 So I did consider the no-project alternative. And  
8 I did briefly consider rooftop solar but ruled it out.

9 CROSS-EXAMINATION

10 MR. JENKINS: This is Dave Jenkins with the  
11 applicant team. The applicant did include the no-project  
12 alternative in its analysis, but we did not include rooftop  
13 solar.

14 MS. SMITH: Okay. Did any of you do an analysis  
15 on the increase of CHP?

16 MR. JENKINS: This is Dave Jenkins. We did not  
17 include an analysis on CHP in that it was well outside the  
18 scope of the request for offers from SDG&E.

19 MS. SMITH: Would you agree that CHP may e a no-  
20 project alternative -- alternative?

21 MR. JENKINS: As I -- this is Dave Jenkins again.  
22 As I understand CHP, that is a project. So it would not  
23 qualify as a no-project alternative.

24 MR. SOLORIO: This is Eric Solorio. I did not  
25 consider CHP either. And, you know, on the -- the same

1 response earlier, it sounds like two separate questions.  
2 It's a project, and therefore not the no-project  
3 alternative.

4 MS. SMITH: I didn't hear that.

5 MR. SOLORIO: This is Eric Solorio. I authored  
6 the alternative section of the FSA. And I did not consider  
7 combining heat and power as an alternative. And I think you  
8 also couched that in the context of a no-project  
9 alternative, which I think is confusing.

10 MS. SMITH: Did any of you consider hybrid  
11 generation opportunities when looking at -- for alternative  
12 technologies?

13 MR. JENKINS: Again, this is Dave Jenkins with the  
14 applicant team. We did not include such technology.

15 MS. SMITH: Are you aware that those technologies  
16 exist?

17 MR. JENKINS: I am aware of such technologies.  
18 But, again, it was well outside of the scope of the SDG&E  
19 RFP.

20 MS. SMITH: Are you aware that those technologies  
21 are being used on peaker power plants in California?

22 MR. JENKINS: I am aware. But, again, it was well  
23 outside of the scope of the RFP.

24 MS. SMITH: Did any of you consider combined cycle  
25 technology when -- when doing your analysis for

1 alternatives?

2 MR. SOLORIO: Yes. This is Eric Solorio, and I  
3 did consider it. And it is included in the analysis.

4 MS. SMITH: Did you consider rapid response  
5 combined cycle technology?

6 MR. SOLORIO: One moment, please. I need to ask a  
7 clarifying question here. Or, actually, let me just ask it  
8 out loud.

9 GWF Tracy Combined Cycle Power Plant, Dave, you  
10 know, that rapid start --

11 MR. VIDAVER: Yeah.

12 MS. SMITH: I did not hear that.

13 PRESIDING MEMBER PETERMAN: You've to speak a  
14 little clearer on this system.

15 MR. SOLORIO: I had just asked Mr. Vidaver, who is  
16 sitting next to me, whether or not GWF Tracy is a rapid  
17 start, and he answered, no. So that was -- GWF Tracy was  
18 the type of combined cycle considered in the alternatives  
19 analysis.

20 MS. SMITH: Are you aware that there are -- that  
21 the El Segundo Plant uses that rapid response combined cycle  
22 technology?

23 MR. SOLORIO: I'm not aware personally, no.

24 MS. SMITH: Okay. Are you aware that the rapid --  
25 the new rapid response combined cycle technology can deliver

1 150 megawatts of capacity within ten minutes of startup?

2 MR. SOLORIO: I'm not aware of that.

3 MS. SMITH: And that -- that's actually -- are you  
4 aware that that's actually being used at the El Segundo  
5 Plant?

6 MR. SOLORIO: I'm sorry. Could you state that  
7 again?

8 MS. SMITH: Are you aware -- so you're saying that  
9 you're not aware that this rapid response combined cycle  
10 technology that can start within 10 -- or that can produce  
11 150 megawatts of capacity within 10 minutes is being used in  
12 California at the El Segundo Plant?

13 MR. SOLORIO: I'm not aware of what's being used  
14 at the El Segundo Plant.

15 MS. SMITH: Okay. Are you aware of any technology  
16 or any rapid response combined cycle technology that can  
17 start within -- produce 150 megawatts within 10 minutes of  
18 startup time?

19 MR. SOLORIO: Off the top of my head, I could not  
20 tell you the exact name, but I know that I did look at one  
21 in another case that we had that I worked on. So -- but I  
22 can't tell you --

23 MS. SMITH: Did you do an analysis of that?

24 MR. SOLORIO: Yes, I did, not in this case though,  
25 not in this, in the Pio Pico Project.

1           MR. JENKINS: This is Dave Jenkins. I just want  
2 to make everyone aware that we have 300 megawatts in this  
3 proposal that will, in fact, start up within 10 to 30  
4 minutes.

5           MS. SMITH: Well, are you aware that the rapid  
6 response combined cycle technology has a lower emissions, is  
7 actually able to reduce nitrogen emissions to less than 2  
8 parts per million and 50 percent oxygen?

9           MR. JENKINS: I'm not aware of such performance,  
10 no.

11          MS. SMITH: And you're not aware that that  
12 technology is actually being used in California at four  
13 separate plants, including the El Segundo Plant?

14          MR. BELL: I'll have to object. That's assuming  
15 facts not in evidence. We don't have anything --

16          MS. SMITH: I'm just asking of their knowledge of  
17 other technology that similar to -- that would be a viable  
18 alternative to what's being proposed --

19          PRESIDING MEMBER PETERMAN: And this is  
20 Commissioner Peterman.

21          MS. SMITH: -- if they have that knowledge.

22          PRESIDING MEMBER PETERMAN: This is Commissioner  
23 Peterman. I just wanted to interject quickly, just on a  
24 factual basis, El Segundo is under construction and it's  
25 currently not being used, just in terms of your -- your word

1 choice. Because you've referenced that plant a number of  
2 times.

3 MS. SMITH: Oh.

4 HEARING OFFICER RENAUD: Mr. Bell, I take it your  
5 objection is based on the form of the question, which is are  
6 you aware that? Is that --

7 MR. BELL: Right. The question is -- I'm not  
8 trying not to object too much. But the question is assuming  
9 facts that are not in evidence. They're not before the  
10 committee.

11 I think it would be appropriate to ask a witness,  
12 do you know if, and a witness can answer that. But assuming  
13 that's not in evidence and asking the witness to answer a  
14 question based on that fact is objectionable, based on --

15 HEARING OFFICER RENAUD: I understand your  
16 objection. But I think these witnesses are quite, quite  
17 bright and can fend for themselves. If they -- if there's  
18 something wrong in the question they can tell me. So thank  
19 you. Overruled.

20 MS. SMITH: Do you know if that technology is in  
21 existence and has been -- or has been approved by the CEC?

22 MR. SOLORIO: Can you please -- this is Eric  
23 Solorio. Can you please clarify what technology you're  
24 speaking about?

25 MS. SMITH: Sure. Do you know if the rapid

1 response combined cycle technology has been approved for use  
2 by the CEC in California?

3 MR. SOLORIO: It --

4 HEARING OFFICER RENAUD: You'd have to refer to a  
5 specific project, I think. We don't generally speak  
6 technologies.

7 MS. SMITH: Okay. Do you know if the combined  
8 rapid response technology was approved for the Lodi  
9 Facility?

10 MR. SOLORIO: Raoul, I would have to object. The  
11 scope here that they are allowed to cross me on, at least,  
12 is hybrid generation opportunities, combined heat and power,  
13 and distributed. This is outside of that scope.

14 MR. BELL: I'll object on behalf of my client.

15 MR. SOLORIO: Thank you. Sorry.

16 HEARING OFFICER RENAUD: I understand that. But  
17 let's just find out if anybody has the answer to that  
18 question, since it's about another project. If you don't  
19 know then it really doesn't matter. Do you know?

20 MR. SOLORIO: This is Eric Solorio. It's not in  
21 my testimony.

22 HEARING OFFICER RENAUD: Do -- do you know the  
23 answer to the question?

24 MR. SOLORIO: No, I don't.

25 HEARING OFFICER RENAUD: All right. Mr. Jenkins,

1 do you?

2 MR. JENKINS: I do not know.

3 HEARING OFFICER RENAUD: Okay. No one knows the  
4 answer to that question anyway. So --

5 MS. SMITH: Okay. I'll move on.

6 HEARING OFFICER RENAUD: -- it sounds like you  
7 might.

8 MS. SMITH: But did the CEC -- or did the -- did  
9 the staff for the CEC look at improved forecasting of wind  
10 or solar and more rapid forecasts, 30 minutes versus 1 hour,  
11 to eliminate the need for this project?

12 MR. BELL: Objection. Relevance.

13 MS. SMITH: It goes again to -- at this point it  
14 goes to the no-project alternative --

15 HEARING OFFICER RENAUD: I agree. Overruled.

16 MS. SMITH: -- analysis.

17 HEARING OFFICER RENAUD: Can anybody answer that  
18 question?

19 MS. SMITH: I can break it down if they're --

20 HEARING OFFICER RENAUD: Thank you.

21 MS. SMITH: Okay. So did they -- CEC -- did the  
22 staff look to improve forecasting of wind and solar when  
23 doing their analysis?

24 HEARING OFFICER RENAUD: Anybody?

25 MS. SMITH: Or are you aware, as the CEC actually

1 looked to improve forecasting of wind or solar?

2 MR. SOLORIO: This is Eric Solorio. No, I didn't.

3 MS. SMITH: Okay. Are you aware of more rapid  
4 forecasts --

5 CROSS-EXAMINATION

6 MR. VIDAVER: This is --

7 MS. SMITH: -- for example, the 30 minute versus a  
8 1 hour?

9 MR. VIDAVER: -- Dave Vidaver, Energy Commission  
10 Staff. I am aware that was an energy research group  
11 routinely funds projects that are designed to improve wind  
12 and solar forecasting, often in concert with the --

13 MS. SMITH: I'm sorry. I did not hear a word you  
14 just said.

15 MR. VIDAVER: Sorry. This is Dave Vidaver with  
16 the Energy Commission Staff. Can you hear me now?

17 MS. SMITH: Sort of, yes.

18 MR. VIDAVER: We'll try Mr. Solorio's microphone  
19 here. This is Dave Vidaver with the Energy Commission  
20 Staff. I am aware that the Energy Commission has funded  
21 research projects for improved wind and solar forecasting in  
22 concert with the ISO.

23 MS. SMITH: Okay. And then would you agree that  
24 with more rapid forecasting, for example the 30 minutes  
25 versus the 1 hour, it may eliminate the need for a facility

1 like this, a plant like this -- this -- Pio Pico?

2 MR. VIDAVER: I think all I can say is that  
3 improved forecasting would reduce the need for ancillary  
4 services that can be provided by various resources,  
5 including generation, demand response, and storage.

6 MR. SOLORIO: This is Eric Solorio. I'd like to  
7 expand on that a bit, since it goes to the no-project  
8 alternative.

9 HEARING OFFICER RENAUD: Please.

10 MR. SOLORIO: I scoped the alternatives' analysis  
11 based on, to a large extent, project objectives, and also  
12 the need that has been established through CEC by  
13 authorizing SDG&E to issue the RFO for this project. So the  
14 need is there, regardless of what is done with the  
15 forecasting.

16 So as to the no-project alternative, as I've  
17 written in my testimony, that need would be filled by  
18 another project if not this project, because it's already  
19 been authorized.

20 MS. SMITH: Okay.

21 HEARING OFFICER RENAUD: Okay. Next question.

22 MS. SMITH: Absolutely. Are you aware of the  
23 CEC's 2009 decision for the Chula Vista Energy Project?

24 HEARING OFFICER RENAUD: I think we've all heard  
25 of it. They're all looking at me like they've heard of it.

1 But maybe you can ask --

2 MS. SMITH: Okay.

3 HEARING OFFICER RENAUD: -- a more specific  
4 question.

5 MS. SMITH: In that -- in that decision they  
6 state -- well, the CEC actually -- the decision clearly  
7 states that rooftop solar is a viable alternative to plants.  
8 And this was specifically in conjunction with Chula Vista,  
9 but we could apply this to plants like Pio Pico. However,  
10 in your testimony you guys do say that there's no solar  
11 viable option; correct?

12 MR. BELL: I'll have to object. The commission  
13 decisions are no precedential. Subsequent decisions are not  
14 bound by any decisions previously made by -- by the  
15 commission, unless so specified. Chula Vista is not a  
16 precedential decision.

17 HEARING OFFICER RENAUD: That's correct. And --

18 MS. SMITH: It may not --

19 HEARING OFFICER RENAUD: -- that --

20 MS. SMITH: It may not be --

21 HEARING OFFICER RENAUD: -- that's really an  
22 objection.

23 Are you quoting from the Chula Vista decision,  
24 Ms. Smith?

25 MS. SMITH: I am just pointing out the Chula Vista

1 decision --

2 HEARING OFFICER RENAUD: All right. So let's --

3 MS. SMITH: -- that it -- they -- that it was  
4 considered a viable -- rooftop was considered a viable no-  
5 project alternative.

6 HEARING OFFICER RENAUD: Well, I --

7 MS. SMITH: And that was 100 megawatt peaking  
8 facility.

9 HEARING OFFICER RENAUD: I think it would be a  
10 more valuable question if you were referring to some  
11 specific statement in there. But I guess I'm having  
12 problems understanding what the question is here. No --

13 MS. SMITH: Well, the CEC, in 2009, stated that  
14 rooftop solar is a viable no-project alternative.  
15 However --

16 HEARING OFFICER RENAUD: With respect to that  
17 project.

18 MS. SMITH: -- in the FSA --

19 HEARING OFFICER RENAUD: With respect to that  
20 project.

21 MR. SOLORIO: This is Eric Solorio. I --

22 HEARING OFFICER RENAUD: And -- and that's where  
23 I'm having a hard time, is linking that to this project  
24 because they were quite different.

25 MS. SMITH: Well, the -- the Chula Vista Project

1 is 100 megawatt -- or was a 100 megawatt peaker facility  
2 that was -- that was described as needed for peaking fast  
3 starts.

4 HEARING OFFICER RENAUD: But the testimony --

5 MS. SMITH: So -- and it's --

6 HEARING OFFICER RENAUD: -- in that case was  
7 also -- and this is Mr. Renaud speaking -- was that the net  
8 increase in output over the existing Chula Vista Facility  
9 was something like 45 megawatts, if I recall correctly. So  
10 we weren't talking about a whole lot of power.

11 And that's my problem with your referring  
12 generally to that decision, is that you are -- it's a long  
13 document, and there are a lot of things in there that you're  
14 not referring to that have a bearing on it.

15 So -- and as Mr. Bell points out, these are not  
16 precedential decisions. They -- they are not binding on the  
17 commissions. If you have a specific question about  
18 something that, you know, you want to quote from that would  
19 be -- you know, we could listen to that question.

20 But I'm -- I'm concerned about your generalizing  
21 about the Chula Vista decision in this proceeding. I think  
22 it's getting far afield and undue consumption of time, and  
23 really not having any bearing on what we're doing here.

24 MS. SMITH: Okay. Then I guess we could go to --  
25 this -- these are going to be for David Vidaver -- Vidaver.

1 HEARING OFFICER RENAUD: Okay.

2 MS. SMITH: Okay.

3 HEARING OFFICER RENAUD: Mr. Vidaver, before you  
4 start let me just remind you to get -- get about as close to  
5 that mike as you can. Because you have a rather deep voice,  
6 and so we're going to need to get it really loud so it will  
7 pick up -- be picked up by that small speaker phone. Okay.

8 Go ahead with your question.

9 MS. SMITH: Did you rely on a study to assert that  
10 additional rapid response gas-fired power plants are  
11 necessary to integrate wind and solar in SDG&E territory?

12 MR. VIDAVER: Can you refer me to a page of my  
13 testimony please?

14 MS. SMITH: Can I refer to -- excuse me?

15 MR. VIDAVER: I'm not -- it would help me if you  
16 would direct me to where I said that or wrote that.

17 MS. SMITH: Let me see. If you'll give me just a  
18 second.

19 (Pause)

20 MS. SMITH: I apologize. I'm just trying to find  
21 this, your testimony, and it's on page -- if I could have  
22 just a brief moment?

23 HEARING OFFICER RENAUD: Okay. That's fine. I  
24 take it you're -- you're looking at the, what, eight-page  
25 letter that was submitted last week; right?

1 MS. SMITH: Correct.

2 HEARING OFFICER RENAUD: All right.

3 MS. SMITH: Correct.

4 HEARING OFFICER RENAUD: Okay. And for the  
5 record, I'll just state that that is Exhibit 206, or 206 for  
6 identification.

7 (Pause)

8 HEARING OFFICER RENAUD: Do you perhaps have  
9 another question you could ask while you're looking for what  
10 you're looking for?

11 MS. SMITH: Sorry about that. I had you on mute.  
12 I'm going to skip ahead, and I will get to that again.

13 The CEC, you state your surrebuttal, and that's on  
14 page five, that the PPEC is needed to provide morning and  
15 evening mode following year round. Does the CEC anticipate  
16 that the ramp rates will be substantially greater than 500  
17 megawatts per hours by 2020?

18 MR. VIDAVER: I don't recall testifying to  
19 necessary ramp rates, providing any quantity for the number  
20 of megawatts needed per hour to meet the morning ramp, or  
21 evening ramp, for that matter.

22 MS. SMITH: Okay. You state that the PPEC is not  
23 solely a peaking facility; is that correct, in your  
24 testimony?

25 MR. VIDAVER: I -- if -- if it appears in my

1 testimony somewhere that it is not strictly a peaking  
2 facility, I would agree. And it's not a peaking facility in  
3 a classic sense that it's designed to meet peak loads at  
4 2:00 in the afternoon, for example, when the 2:00, 3:00, 4  
5 o'clock in the afternoon on extremely hot days when the peak  
6 load traditionally occurs. Correct, it is not a peaking  
7 facility in that sense.

8 MS. SMITH: Okay. Do you -- does the CEC perceive  
9 solar to be a peaking resource?

10 MR. VIDAVER: Solar -- the -- the peak of  
11 California's utilities generally occurs from three o'clock  
12 to five o'clock in the afternoon in the summer. I think  
13 we're all familiar with the generation profile of solar  
14 starting to increase to 7 o'clock, peaking around 12:30 or  
15 1:00, and then decreasing to zero at 7:00, 7:30, depending  
16 on time of year. So it's -- it's designed to produce energy  
17 during hours that are classified as peak or super peak  
18 hours. Whether that makes it strictly a peaking resource is  
19 subject to interpretation. It's not dispatchable. You  
20 can't demand more of it during the highest load hours. You  
21 simple get a lot of it at two o'clock, one o'clock in the  
22 afternoon, and less, sometimes none, during other hours.

23 MS. SMITH: Okay. In your testimony you use one-  
24 in-ten long-term forecasting as the basis for Pio Pico; is  
25 that correct? ?

1           MR. VIDAVER: I use -- I use one-in-ten peak load  
2 conditions to indicate the conditions under which the  
3 California ISO assesses the need for local capacity.

4           MS. SMITH: Okay. And don't the IOUs require it  
5 making a 15 to 17 percent reserve margin for the one-in-two  
6 forecast?

7           MR. VIDAVER: Yes.

8           MS. SMITH: And wouldn't that assure meeting with  
9 the WECC reserve margin requirement of seven percent when  
10 applied to the one-in-ten forecast?

11          MR. VIDAVER: Can you repeat that a little slower?

12          MS. SMITH: That's all right. You said yes to the  
13 one -- to the reserve margin for one-in-two -- one-in-two  
14 forecasts. Would that assure meeting the WECC reserve  
15 margin requirement of seven percent when applied to the one-  
16 in-ten forecast?

17          MR. VIDAVER: I don't think I said yes with  
18 respect to a one-in-two forecast, but I might be mistaken.  
19 The -- the Public Utilities Commission requires that the  
20 utilities under its jurisdiction, and the ISO requires the  
21 other load-serving entities in its balancing authority to  
22 maintain a 15 to 17 percent reserve margin on a monthly  
23 basis. The -- this traditionally has been assumed to be  
24 significant to meet operating requirements in real time of  
25 about an eight or nine percent operating reserve margin

1 needed to -- to maintain reliability. This is arguably  
2 changing as we get more intermittent resources. The ISO, in  
3 various studies, has concluded that the necessary planning  
4 reserve margin is higher than 15 to 17 percent to maintain  
5 the levels of reliability that are necessary.

6 MS. SMITH: You had --

7 MR. VIDAVER: I don't know if I answered your  
8 question. I'm sorry.

9 MS. SMITH: That was -- that was actually a yes or  
10 no question, but that's fine.

11 Does the CEC have evidence to support its position  
12 that the Palomar and Otay Mesa Plants are not designed to  
13 operate in a simple-cycle mode?

14 MR. VIDAVER: Do we have evidence that -- one  
15 moment please. It is my --

16 MS. SMITH: And that would be on page five that  
17 you --

18 MR. VIDAVER: Yeah. It is -- its my understanding  
19 that the -- let me -- let me refer back to my testimony.  
20 They are not -- your questions was: Are Otay Mesa and  
21 Palomar designed to operate in single -- simple-cycle mode?

22 MS. SMITH: Actually, my question was: Do you  
23 have evidence that Palomar and Otay Mesa Plants can operate  
24 in simple-cycle mode with a steam turbine generator in  
25 forced outage?

1           MR. VIDAVER: It is -- it is -- it is my  
2 understanding that the conditions of certification of those  
3 two facilities preclude them from operating in that mode.  
4 But I will admit that that is only something I have been  
5 told by my fellow staff. So I can not testify to the --  
6 with any certainty.

7           MS. SMITH: And where am I here? Okay.

8           The CAISO has stated that the Demand Response Flex  
9 Alert can provide an additional 1,000 megawatts of peak load  
10 this summer to offset the loss of (inaudible). Aren't DR  
11 services an alternative to Pio Pico?

12          MR. VIDAVER: I -- I don't believe I provided any  
13 testimony on that.

14          MS. SMITH: For all of the alternatives'  
15 witnesses, would you -- would DR services be considered an  
16 alternative to Pio Pico?

17          MR. SOLORIO: I'm sorry. This is Eric Solorio. I  
18 don't understand the question.

19          MS. SMITH: The California ISO stated that Demand  
20 Respond Flex Alerts could provide an additional 1,000  
21 megawatts of peak load this summer to offset the loss of  
22 (inaudible).

23          Aren't DR services an alternative to Pio Pico?

24          MR. VIDAVER: I -- my -- one moment please.

25          (Colloquy Between Mr. Solorio and Mr. Vidaver)

1 HEARING OFFICER RENAUD: This is Mr. Renaud  
2 speaking. I have a problem with the question. Because what  
3 you just quoted from referred to this summer; right?

4 MS. SMITH: Uh-huh.

5 HEARING OFFICER RENAUD: And I don't think there's  
6 any possible way that project would be online this summer.  
7 So I have a concern over the relevance of the question.

8 MS. SMITH: Okay.

9 MR. VIDAVER: I'm willing to opine on this  
10 subject, much to legal counsel's dismay.

11 MR. BELL: All right.

12 HEARING OFFICER RENAUD: Let's go to the next  
13 question please.

14 MS. SMITH: That's fine. Isn't it true that  
15 Demand Response can respond in seconds in minutes, quicker  
16 than the LMS 100 to changes in demand?

17 MR. VIDAVER: No. There -- there -- the load  
18 impact report submitted by the three investor-owned  
19 utilities show, for 2012, show roughly 2,600 megawatts of  
20 demand response. Much more than 2,600 megawatts of demand  
21 response were assumed by the CPUC to be in place when the  
22 need for the capacity value of Pio Pico was assessed  
23 pursuant to the 2006 procurement plan, long-term procurement  
24 plan and process. A healthy share of demand response  
25 requires, for example, 4-hour, 6-hour, 24-hour notification

1 before the participant in the program is required to comply  
2 with the program administrators request/demand. So actually  
3 a very small share -- I'm not sure how -- whether small is  
4 the right adjective -- but only a share of demand response  
5 programs in the ISO balancing authority area can respond  
6 within minutes.

7 MS. SMITH: You're saying only a share can respond  
8 within minutes?

9 MR. VIDAVER: Yes.

10 MS. SMITH: There -- there is -- they can't --  
11 there are some that are quicker than the LMS 100; correct?

12 MR. VIDAVER: Yes. And the -- the megawatts of  
13 capacity associated with that share is less than the amount  
14 that was assumed to exist in, for example, the San Diego --  
15 the San Diego Gas and Electric service territory when the  
16 CPUC ruled in, I believe late 2007, that several hundred  
17 megawatts of capacity should be procured, either on behalf  
18 of their bundles customers, or on behalf of all customers in  
19 the San Diego Gas and Electric service territory.

20 MS. SMITH: Okay. Isn't the 700 megawatts of  
21 existing peak capacity in SDG&E local area, in addition to  
22 being local capacity, also capable of responding to the  
23 rapid changes in load?

24 MR. VIDAVER: I -- I'm --

25 MS. SMITH: Hello?

1           MR. VIDAVER: Hi, I'm here. I'm sorry. I'm just  
2 pondering an answer to this question. I am not aware of the  
3 amount of dependable capacity. I'm not -- I'm not sure that  
4 there are 700 megawatts. But I -- I doubt there are  
5 substantially less. I will take your word that there are  
6 700 megawatts.

7           For these resources, most of which have incredibly  
8 high heat rates, we're talking 12 to 20,000 BTU per kilowatt  
9 hour, to fire them up as needed during the morning ramp and  
10 then turn them off and do it again in the evening, during  
11 the evening ramp, should loads not fall as fast as solar  
12 output would produce would require the combustion of far  
13 more natural gas than a facility such as Pio Pico.

14          MS. SMITH: Did you just say that solar would  
15 require far more natural gas than Pio Pico?

16          MR. VIDAVER: No. I --

17          MS. SMITH: I'm sorry. I misunderstood you then.

18          MR. VIDAVER: I'm saying that -- that using, let's  
19 say 300 of the supposed 700 megawatts of existing peakers I  
20 lieu of Pio Pico to meet morning and afternoon ramping needs  
21 would result in the combustion of far more natural gas. I  
22 can not -- and I can't say anything about what criteria  
23 pollutants and, etcetera, and how those would be affected.  
24 But it certainly would require the combustion of far more  
25 natural gas. I suspect that it would, on a -- doing so on a

1 regular basis would quickly bump you up right against the  
2 permit limits of those facilities.

3           It's my understanding that most, if not all of  
4 them can operate only a few hundred hours a year. And if  
5 you were to use -- I understand Pio Pico is expected, based  
6 on something that was said here earlier today, to be used  
7 perhaps 2,000 hours a year. I suspect that you would  
8 probably not get very far into the year before all of these  
9 peakers would be up against their annual permit limits,  
10 air --

11           MS. SMITH: Okay.

12           MR. VIDAVER: -- air limits.

13           MS. SMITH: Do you have any reports or evidence  
14 that supports the CEC's position that with increasing solar  
15 and wind resources in the system peakers will be dispatched  
16 more often?

17           MR. VIDAVER: Peakers will be dispatched more  
18 often? I believe the ISO's Renewable Integration Study,  
19 which looks at a very high penetration of intermittent  
20 resources, wind and solar in 2020, has concluded that the  
21 need for ramping, startups, load following services,  
22 regulation would all increase. So any -- my conclusions  
23 would be based on the findings of that study or those  
24 studies. They've done several.

25           MS. SMITH: Okay. Do you know the solar and wind

1 forecasting assumptions behind that assertion that with  
2 decrease in solar and wind you'll need more peaker plants  
3 dispatched?

4 MR. VIDAVER: I can't provide any details about  
5 the solar and wind forecasting. I know the -- the Renewable  
6 Integrations Study, a key input is -- to that study are  
7 three types of forecasting error; solar forecasting error,  
8 wind forecasting, and demand or load forecasting error.  
9 The -- in different iterations of this study it is my  
10 understanding that the ISO assumed an improvement in at  
11 least the ability to forecast loads over the next seven  
12 years. I can't -- I can't say whether or not they assumed  
13 an improved ability to forecast solar and wind resources. I  
14 can say that the largest need for this kind of flexibility  
15 came from a load forecasting error.

16 MS. SMITH: Are you familiar with the assumptions  
17 behind the IOU monitoring dispatch controlled solar with  
18 outputs?

19 MR. VIDAVER: No, I am not.

20 MS. SMITH: On page six you state in your  
21 surrebuttal testimony that flexibility is not a local need,  
22 it is a system-wide one; is that true?

23 MR. VIDAVER: Yes, I stated that.

24 MS. SMITH: Couldn't more frequent resource  
25 scheduling, for example every 15 minutes of 30 minutes

1 instead of every hour, improve wind and solar forecasts?

2 MR. VIDAVER: Could more frequent scheduling of  
3 the resources themselves improve forecasting? I would  
4 expect the answer to that question is, yes.

5 MS. SMITH: Okay. And along those lines, the  
6 approved coordination between utilities would provide  
7 equivalent flexibility; correct?

8 MR. VIDAVER: I'm afraid I don't understand. The  
9 utilities can coordinate the output of such resources. And  
10 the utilities do not perform forecasts of the output.

11 MS. SMITH: Well, let me -- let me clarify.

12 MR. VIDAVER: Okay.

13 MS. SMITH: Okay. So you were saying that  
14 flexibility is not a local need, it's a system-wide one;  
15 right?

16 MR. VIDAVER: Correct.

17 MS. SMITH: Am I correct that that was your  
18 testimony?

19 MR. VIDAVER: Yes.

20 MS. SMITH: Okay. And then you said that if we  
21 had -- you agree that if we had more frequently scheduling  
22 for say 15 minutes or 30 minutes instead of every hour it  
23 would improve wind and solar forecasts; right? I believe  
24 you're --

25 MR. VIDAVER: Yes.

1 MS. SMITH: -- was yes.

2 MR. VIDAVER: Yes.

3 MS. SMITH: Okay. So if we improve wind and solar  
4 forecasts would that not improve the coordination between  
5 the utilities and provide equivalent flexibility?

6 MR. VIDAVER: What exactly are -- are the  
7 utilities coordinating in this scenario?

8 MS. SMITH: I believe the wind and solar.

9 MR. VIDAVER: The -- the utilities have no control  
10 over wind and solar output. So they've -- they -- they  
11 would have -- if they -- if they dispatched the system they  
12 would have better information about, for example, wind and  
13 solar output 15 minutes from now. But it's the -- it's the  
14 ISO who -- who looks -- the ISO does the forecasting of wind  
15 and solar for all three -- over all three utility service  
16 areas.

17 MS. SMITH: Okay. Having the -- or the more  
18 frequently scheduling, then would that provide equivalent  
19 flexibility, allow the ISO to -- to provide that flexibility  
20 then?

21 MR. VIDAVER: I'm going to take, I think a really  
22 good guess of where you're going. If we improved wind and  
23 solar forecasting, for example by scheduling those resources  
24 more frequently, assuming that -- you can't -- you can't  
25 merely schedule the -- the resources. You could schedule

1 the -- you could require the generator to submit a schedule  
2 every five minutes. But unless you can -- unless that  
3 schedule for each generator is truly adequate -- truly  
4 accurate you -- you might not be able to forecast much  
5 better. But assuming that you could you -- you could reduce  
6 the -- at the margin somewhat the amount of gas-fired  
7 capacity you would need available to provide -- or the  
8 amount of demand response or storage or the amount of  
9 ancillary services you would need, yes. I -- yes.

10 MS. SMITH: Okay. Did the CEC consider at all the  
11 utility scale battery storage as an alternative solution to  
12 the Pio Pico LMS 100s?

13 MR. SOLORIO: This is Eric Solorio. No.

14 MS. SMITH: Okay. CEC -- you said -- you  
15 estimated the fixed costs associated with the new 100  
16 megawatt gas turbines at \$283 per kilowatt hour per year; is  
17 that correct?

18 MR. SOLORIO: This is Eric Solorio. Where is that  
19 in the testimony?

20 MS. SMITH: I'm actually referring to a document,  
21 the CEC's Comparative Costs of California Central Station  
22 Electricity Generation, and it was a January 2010 document.

23 MR. BELL: I'll have to object. That's outside  
24 the scope of the testimony provided by these witnesses.

25 HEARING OFFICER RENAUD: Yeah. The cross --

1 excuse me. The cross-examination is about the witnesses  
2 testimony. And -- and in this case, this case was limited  
3 to certain topics as well. So if you would please stick to  
4 the witnesses testimony.

5 MS. SMITH: I can -- I will move on.

6 Can you describe any distributed solar scenarios,  
7 10,000 arrays over 100,000 square miles where fast ramp  
8 would be necessary?

9 MR. BELL: Objection. Vague. And relevance.

10 HEARING OFFICER RENAUD: Can you -- can you try  
11 and rephrase that question? I think everybody had  
12 difficulty with it.

13 MS. SMITH: Did -- you all answered that together?  
14 Is that what I just heard?

15 HEARING OFFICER RENAUD: No. This is Mr. Renaud  
16 speaking. I don't think anybody understood the question.  
17 And we're wondering if you could take another stab.

18 MS. SMITH: Okay. Are you aware of any  
19 distributed solar scenarios of 10,000 arrays over 100 square  
20 miles where a fast ramp would be necessary?

21 MR. SOLORIO: This is Eric Solorio. No.

22 MS. SMITH: Okay. Do you know if there's a  
23 significant wind output in San Diego -- in the San Diego  
24 region on high demand summer afternoons?

25 MR. SOLORIO: Can you please restate the question.

1 MS. SMITH: Do you know if there is a significant  
2 wind output in San Diego -- in the San Diego region on high  
3 demand summer afternoons?

4 MR. BELL: I'll have to object to the form of  
5 question. Significant is a subjective term. And I do  
6 believe that it's getting perilously close to being outside  
7 the scope of the cross-examination that's been allowed.

8 MS. SMITH: Again, it goes into the no-project  
9 alternative.

10 HEARING OFFICER RENAUD: Well, a no-project  
11 alternative would be no project. And it sounds like your  
12 suggesting wind project instead. So I think the -- I'm  
13 going to ask you to try and keep your questions more close  
14 to the scope of the allowed areas.

15 MS. SMITH: Okay. Isn't -- isn't an 8:00 p.m.  
16 peak all residential air -- or excuse me. Isn't the 8:00  
17 p.m. peak that you guys -- that this project is supposed to  
18 be, I guess relieving caused by residential air  
19 conditioning?

20 MR. VIDAVER: I offered no testimony on that.

21 HEARING OFFICER RENAUD: I'm not -- I'm not sure  
22 that is in testimony --

23 MR. BELL: No. I was going to object. It does --

24 HEARING OFFICER RENAUD: -- about what causes the  
25 peak.

1 MR. BELL: It does misstate the testimony. I  
2 don't believe that we have any testimony in here that the  
3 8:00 p.m. peak is the only reason why staff is supporting  
4 the Pio Pico Energy Center's --

5 HEARING OFFICER RENAUD: Well, the question was  
6 whether air conditioners cause the 8:00 p.m. peak. And I  
7 don't think there anything in the record, anybody's  
8 testimony about that.

9 MS. SMITH: Okay. Are you aware of any technology  
10 that could reduce this peak, besides the Pio Pico Plant?

11 HEARING OFFICER RENAUD: Again, I don't see where  
12 that would -- this is Mr. Renaud speaking. I don't see  
13 where that would be in anybody's testimony. If you can  
14 point to something we'll look at it, but that just doesn't  
15 sound like, to me, like what's in the testimony that I've  
16 read. So I'm going to sustain the objection based on  
17 outside the scope of the direct.

18 MS. SMITH: At this time I believe I've -- I've  
19 gone through our -- our cross questions.

20 HEARING OFFICER RENAUD: All right.

21 MS. SMITH: I have one last question, actually.

22 Has the CEC considered increasing the number of  
23 CHP facilities in the surrounding area?

24 MR. BELL: Objection. Asked and answered.

25 HEARING OFFICER RENAUD: It's a yes or no

1 question. Can someone say yes or no. If it was asked and  
2 answered just --

3 MR. SOLORIO: This is Eric Solorio. No.

4 MS. SMITH: Okay.

5 HEARING OFFICER RENAUD: All right. According to  
6 my records here you now have a presentation -- you have  
7 questions -- or you're going to present Mr. Powers?

8 MS. SMITH: I would like to present Mr. Powers.  
9 That is correct.

10 HEARING OFFICER RENAUD: All right. And this will  
11 be his rebuttal testimony that was submitted July 7th -- or  
12 6th.

13 MS. SMITH: Mr. Powers, are you there?

14 HEARING OFFICER RENAUD: Yes. He's coming up to  
15 the mike.

16 MS. SMITH: Oh.

17 HEARING OFFICER RENAUD: Please put that right in  
18 front of your face so everybody can hear you. Okay.

19 MR. POWERS: This is Bill Powers.

20 HEARING OFFICER RENAUD: Okay. Please raise your  
21 right hand.

22 (Whereupon Mr. Powers is sworn.)

23 HEARING OFFICER RENAUD: Please state your full  
24 name.

25 MR. POWERS: William Edward Powers, Jr.

1 HEARING OFFICER RENAUD: Okay. Thank you. Try  
2 and get a little closer to that mike, again, just so we're  
3 very clear. Thank you. That's good.

4 Go ahead.

5 DIRECT EXAMINATION

6 MS. SMITH: Mr. Powers --

7 MR. POWERS: I apologize.

8 MS. SMITH: -- do you believe that the FSA  
9 alternatives' analysis is complete?

10 MR. POWERS: I do not.

11 MS. SMITH: Okay. Where -- where is it lacking?

12 MR. POWERS: The alternatives' analysis, to step  
13 back, since I spoke in this same hearing room in 2009 on  
14 Chula Vista Energy Upgrade Project, the exact same purpose  
15 and need. It was going to be built to provide peaking  
16 capacity and fast ramp. And in that particular case the CEC  
17 did an analysis of rooftop solar. They looked at demand-  
18 side management. The issue with the solar analysis in that  
19 case was that it looked at ground mounted solar. We don't  
20 have 200 acres of 300 acres of available land in Chula  
21 Vista. There was no rejection of solar because it couldn't  
22 fast ramp.

23 Obviously, if you insist that one of the  
24 project -- project requirements is that it's fast ramp, it's  
25 an engine or it's a turbine. There's no other possibility.

1 And so this particular case has simply narrowed the  
2 framework so small that the only alternative is an engine or  
3 turbine. That's why it's inadequate.

4 MS. SMITH: And are you aware of alternatives  
5 that - that the CEC looked at in 2009?

6 MR. POWERS: The two primary alternatives that  
7 were looked at were demand-side management and the rooftop  
8 solar alternative at Biomass. In this particular case the  
9 solar was rejected out of hand as not being able to ramp.  
10 The demand-side management, I think Engineer Vidaver  
11 indicated that in his surrebuttal that it simply didn't meet  
12 the project objectives. It does. But based on these  
13 project objectives being ramp rates for turbines and  
14 engines, obviously DSM and demand response is not  
15 categorized that way.

16 One other comment, and this is important for the  
17 CEC --

18 HEARING OFFICER RENAUD: Let's -- let's wait for  
19 there to be a question please.

20 MS. SMITH: Okay. Are you aware -- are you aware  
21 of the CEC's one-in-two demand forecast for 2011?

22 MR. POWERS: I am.

23 MS. SMITH: And was that accurate?

24 MR. POWERS: Yes.

25 MS. SMITH: It was an accurate use of the CAISO

1 one-in-ten forecast for the -- or the 2022?

2 MR. POWERS: No, that is not accurate.

3 MS. SMITH: Okay.

4 MR. POWERS: The --

5 MS. SMITH: Why not?

6 MR. POWERS: The CEC and the ISO are both treating  
7 the last six summers as an aberration and saying that from  
8 1990 we have a certain -- a certain peak level of increase  
9 for the last six summers in all of California were flat, and  
10 next year and for the next eight years we're back on the  
11 1990 to 2005 ramp rate, which is not reality. But that is  
12 one of the framework issues or assumptions in this case.

13 MS. SMITH: Okay. What was the CEC's forecast in  
14 2011?

15 MR. POWERS: The one-in-two forecast was 4,365  
16 megawatts. The actual peak was 4,355 megawatts.

17 MS. SMITH: Okay. What does the CPUC require IOUs  
18 to maintain?

19 MR. POWERS: Fifteen to seventeen percent reserve  
20 margin, though at this point it's closer to 40 percent.  
21 That's not a requirement, that's just actual overbuilding of  
22 natural gas resources.

23 MS. SMITH: Has there been a net growth in SDG&E  
24 peaks in the last six summers?

25 MR. POWERS: No. The SDG&E peak has fluctuated

1 plus or minus 150 megawatts, 4,500 megawatts fluctuating  
2 plus or minus 150 megawatts in peak in 2011 was 250  
3 megawatts lower than the peak in 2006.

4 The project appears to be based on SDG&E's 2006  
5 long-term procurement plan. There's been no increase in the  
6 peaks since that plan was written.

7 MS. SMITH: Are you aware of any technology that  
8 could be used to reduce the secondary 8:00 p.m. peaks that  
9 is one of the peaks that this would try to reduce with the  
10 Pio Pico --

11 MR. POWERS: Yes.

12 MS. SMITH: -- plant? Okay. And what -- what  
13 technology is that, that you're aware of?

14 MR. POWERS: The only demand that increases after  
15 about 2:00 p.m is residential -- residential homes, air  
16 conditioning. PG&E has a residential air conditioning  
17 cycling program, 400,000 customers, reduces load 400 --  
18 excuse me 345 megawatts. President of the -- of the PUC  
19 called it an incredibly cost-effective solution. We've got  
20 600,000 homes with air conditioners. If we simply had the  
21 program that PG&E has we would eliminate more peak than Pio  
22 Pico could provide in capacity.

23 MS. SMITH: Okay. Are you aware of any other  
24 technology that could be used, perhaps to store -- to store  
25 energy that's -- I'm sorry.

1           Are you aware of any other technologies that could  
2 be used to -- instead of the Pio Pico Plant?

3           MR. POWERS: A couple. Energy storage could be  
4 used. The --

5           MS. SMITH: Okay. So do you -- exactly how is  
6 energy storage able to be used?

7           MR. POWERS: Exhibit 303, which I presume is in  
8 evidence at this point, is a presentation on energy storage.  
9 It's -- one of the slides in that presentation is a direct  
10 comparison to the performance of an LMS 100, which is what  
11 is proposed for Pio Pico, and utility scale energy storage  
12 where it's identified utility scale energy storage is both  
13 more cost-effective, much faster in its ramp rate, and able  
14 to go both ways, up and down, absorb and release energy.

15           Also, the California Energy Efficiency Strategic  
16 Plan is calling for a 50 percent reduction in air  
17 conditioning loads. The way that is also done is by  
18 insisting -- putting the energy efficiency money to state-  
19 of-the-art SEER air conditioners instead of ignoring that,  
20 as we've done to date with our funds.

21           MS. SMITH: Okay. Would adding local solar to San  
22 Diego LCA meet the same local capacity as Pio Pico?

23           MR. POWERS: Yes.

24           MS. SMITH: And how would that do it?

25           MR. POWERS: The CPUC estimates that the -- the

1 net qualifying capacity, the availability of rooftop solar  
2 at peak is about 60 percent. Therefore, you put in 500  
3 megawatts of rooftop solar, you get 300 megawatts at peak.  
4 Even the LMS 100 isn't going to give you 300 megawatts at  
5 100 degrees Fahrenheit here in San Diego. But that's how it  
6 would be done.

7 MS. SMITH: Okay. Are you familiar with the  
8 state's long-term Energy Efficiency Strategic Plan?

9 MR. POWERS: I am.

10 MS. SMITH: Okay. And what does that state? What  
11 is the state's plan?

12 MR. POWERS: The state plan -- the state goals for  
13 2020 are 25 percent of homes are near net zero. Fifty  
14 percent commercial buildings are net zero by 2030,  
15 approximately twenty percent by 2020. If we were to  
16 actually do that we would meet the governor's 12,000  
17 megawatts or new local renewable energy simply by following  
18 that pace in the Energy Efficiency Strategic Plan.

19 MS. SMITH: Okay. Are you familiar -- are you  
20 aware of Governor Brown's Clean Energy Jobs Plan?

21 MR. POWERS: I am.

22 MS. SMITH: And does that have a local focus?

23 MR. POWERS: It does.

24 MS. SMITH: And what is that plan?

25 MR. POWERS: I just addressed that at 12,000

1 megawatts of -- of new local solar. So that is the  
2 centerpiece of the plan.

3 MS. SMITH: Does SDG&E have a prorated allotment  
4 for that plan?

5 MR. POWERS: SDG&E doesn't have an explicit  
6 prorated allotment. But if you did prorate the 12,000  
7 megawatts, it would be approximately 1,000 megawatts of  
8 local renewable energy by 2020.

9 MS. SMITH: How many megawatts of rooftop solar  
10 are installed in the SDG&E territory currently?

11 MR. POWERS: According to SDG&E, based on  
12 testimony I read this morning, 137 megawatts.

13 MS. SMITH: How much -- does SDG&E territory need  
14 to add -- how many megawatts does SDG&E territory need to  
15 add by 2020?

16 MR. POWERS: To meet a prorated allotment of that  
17 12,000 megawatts SDG&E would need to add about 900 megawatts  
18 of local --

19 MS. SMITH: And --

20 MR. POWERS: -- renewables by 2020.

21 MS. SMITH: Would rooftop solar achieve that goal  
22 of --

23 MR. POWERS: Yes.

24 MS. SMITH: -- of meeting that -- of meeting  
25 SDG&E's local megawatt needs by 2020.

1 MR. POWERS: Yes, it would.

2 MS. SMITH: And by how much?

3 MR. POWERS: By adding 900 megawatts of rooftop  
4 solar SDG&E could achieve that prorated allotment of the  
5 governor's 12,000 megawatts of new local renewable energy.

6 MS. SMITH: Would net metered rooftop solars  
7 impose the net cost on ratepayers?

8 MR. POWERS: No.

9 MS. SMITH: Will the Pio Pico Plant impose a net  
10 cost on ratepayers?

11 MR. POWERS: Yes.

12 MS. SMITH: And how much would that cost be?

13 MR. POWERS: The CEC in its cost of electric  
14 generation report indicates that a 100 megawatt gas turbine  
15 has fixed costs of \$283 per kilowatt year. For Pio Pico  
16 that comes out to \$85 million a year in capacity charges.  
17 It's a 20 year PPA. That's \$1.7 billion in capacity fixed  
18 charges that ratepayers pay for the Pio Pico Plant, using  
19 the CEC's fixed cost figures.

20 MS. SMITH: Are you aware of SDG&E's gas-fired --  
21 local gas-fired generation ability to ramp, and how much?

22 MR. POWERS: Yes.

23 MS. SMITH: And how much does SDG&E already have?

24 MR. POWERS: The -- in SDG&E service territory we  
25 have 2 combined-cycle units, 5 boilers, 700 megawatts of

1 peaking capacity. And the local air district, in their  
2 response to Rob Simpson, did provide an ISO document that  
3 gives the ramp rates for combined-cycle units and peakers  
4 and boilers. And using this data that was provided in this  
5 document from the ISO we are able to ramp in San Diego at  
6 about 60 to 70 megawatts a minute.

7           In the same document the ISO states that  
8 California can ramp at 60 to 100 megawatts a minute, and  
9 that this may triple in achieving the 33 percent RPS. Based  
10 on the graphic that ISO provides in this document California  
11 can ramp at more like 1,000 megawatts a minute. The ramp  
12 data provided by ISO in this particular document would  
13 indicate that we have already got the ramp capability we  
14 need to meet the scenarios that they are analyzing for 33  
15 percent RPS.

16           Excuse me. I need to modify a statement I just  
17 made. I said we could ramp at 1,000 megawatts a minute.  
18 ISO is talking about the ISO control area. SDG&E is about  
19 ten percent of that. We can ramp at 60 to 70 percent a  
20 minute in San Diego. ISO control area can ramp at 600 and  
21 700 megawatts a minute. They're saying we need somewhere in  
22 the range of 300 megawatts a minute to meet their 2020 33  
23 percent scenario.

24           MS. SMITH: Okay. Are there -- in addition to  
25 that, are there solar resources available in San Diego that

1 are good or better than Pio Pico?

2 MR. POWERS: Yes.

3 MS. SMITH: And --

4 MR. POWERS: SDG&E --

5 MS. SMITH: -- why are they better?

6 MR. POWERS: SDG&E was part of a study that was  
7 done here back in 2005 that estimated about 4,400 megawatts  
8 of rooftop solar resource roughly split between residential  
9 and commercial, so far we've utilized 137 megawatts of that  
10 4,400 megawatts of capacity. That does not include parking  
11 lot solar, of which we have a significant amount in the San  
12 Diego area.

13 MS. SMITH: Okay. Are solar outputs predictable  
14 on clear days?

15 MR. POWERS: Yes.

16 MS. SMITH: is there a need for fast response  
17 ramping on clear days with rooftop solar?

18 MR. POWERS: No.

19 MS. SMITH: And why not

20 MR. POWERS: When it's clear the panels' output is  
21 a bell curve as the sun crosses the sky, a very gradual bell  
22 curve.

23 MS. SMITH: Does solar have a predictable pattern  
24 on partly cloudy days?

25 MR. POWERS: Yes.

1 MS. SMITH: And can you explain that pattern?

2 MR. POWERS: We have over 15,000 individual solar  
3 arrays in the San Diego County area, spread over 100s of  
4 square miles. And even on partly cloudy days we still get a  
5 bell curve, it's just a flatter bell curve than you get on a  
6 clear day. And the ramp rate is very gradual for that solar  
7 resource.

8 The example given in this ISO document of why we  
9 need ramping resources is a cloud covering a 500 megawatt  
10 utility scale PV system, apparently in Imperial County, that  
11 only as a result of building 500 megawatt arrays can be  
12 knocked out by a cloud do we need the ramping resources.

13 MS. SMITH: Would smart PV invertors enhance ramp  
14 stability?

15 MR. POWERS: Yes.

16 MS. SMITH: And why?

17 MR. POWERS: Smart -- smart three-phased PV  
18 invertors, which are fairly standard or are becoming  
19 standard, can provide reactive power frequency support that  
20 can do everything that the so-called spinning reserve, like  
21 these gas turbines, can provide to the grid and the  
22 stability of the grid.

23 MS. SMITH: So they are a viable alternative to  
24 this proposed plant?

25 MR. BELL: Objection. Calls for a legal

1 conclusion.

2 MR. POWERS: I consider them a viable alternative.

3 MS. SMITH: Is it possible to remotely control  
4 output from individual PV arrays to prevent overloading?

5 MR. POWERS: Yes.

6 MS. SMITH: How -- how is it possible?

7 MR. POWERS: An example that is SCE's March 2008  
8 application for up to 500 megawatts of warehouse PV where  
9 they address the potential challenge of concentrating so  
10 much PV in a specific area, and indicate that they will set  
11 their system up so they will have control over the invertors  
12 of those systems. And should a situation arise where either  
13 weather or grid stability becomes an issue they will control  
14 the invertors to remove that grid reliability issue, which  
15 is the same thing that you can do with wind turbines, as  
16 well, is adjust their output to protect the grid on those  
17 relatively infrequent situations when you might need to do  
18 that.

19 MS. SMITH: Are wind sources a viable no-project  
20 alternative to the Pio Pico Plant?

21 MR. POWERS: No.

22 MS. SMITH: Why not?

23 MR. POWERS: The -- at least in this part of  
24 California the wind resource is very limited in the  
25 summertime. The wind is not only very limited in the

1 summertime, but it's lowest ebb is in the early afternoon.  
2 You get almost no wind output in this part of the state in  
3 July, August and September. I don't recall what SDG&E's  
4 capacity factor is at available, but it's either 10 percent  
5 or 15 percent. You put in 1,000 megawatts of wind in San  
6 Diego you might get 100 megawatts at peak.

7 MS. SMITH: Okay. How many megawatts of wind and  
8 solar does California already have?

9 MR. POWERS: California has a little over 4,000  
10 megawatts of wind capacity, and about 2,200, 2,300 of solar  
11 capacity between utility scale and net meter.

12 MS. SMITH: Have there been any brownouts or  
13 blackouts reported due to the lack of ramping resources --

14 MR. POWERS: No.

15 MS. SMITH: -- from the use of these technologies?  
16 And are you -- do you know why?

17 MR. POWERS: Apparently because we have more than  
18 sufficient ramping capability to handle any fluctuations in  
19 the output of the existing level of solar and wind resources  
20 that we've got.

21 MS. SMITH: Are you aware of any studies that  
22 show -- or that show no-project alternatives to gas-fire  
23 generation?

24 MR. POWERS: Many. One that comes to mind is the  
25 Chula Vista Energy Upgrade Project. Another is any solar

1 thermal project that the commission has reviewed that  
2 include extension evaluation of a rooftop solar alternative.

3 Are you aware of the NREL 35 percent RPS  
4 feasible -- I'm sorry. Strike that.

5 Are you -- are you aware of the NREL study?

6 MR. POWERS: Yes.

7 MS. SMITH: Okay. And what does that study  
8 examine?

9 MR. POWERS: Could you repeat that question?

10 MS. SMITH: What does that study examine?

11 MR. POWERS: The study examines the ability of the  
12 Western United States to achieve a 35 percent RPS by 2017.

13 MS. SMITH: Okay. Has the CEC, that you're aware  
14 of, ever identified poor wind and solar forecasting in  
15 California as a problem?

16 MR. POWERS: Yes.

17 MS. SMITH: Okay. Are you aware of any state or  
18 country that has been able to improve that forecasting?

19 MR. BELL: Objection. Relevance.

20 MS. SMITH: It goes to the, again, to the  
21 viability of --

22 HEARING OFFICER RENAUD: Overruled.

23 MS. SMITH: -- having rooftop solar.

24 HEARING OFFICER RENAUD: Overruled. Go ahead.

25 MR. POWERS: Yes. I was a participant in a CEC

1 hearing last May where we were discussing how to get to  
2 12,000 megawatts of new local generation in California by  
3 2020. A representative from KEMA from Germany came to speak  
4 on that issue. And the German -- the German specifically --  
5 in fact, this is now a CEC report that came out of that --  
6 Germans, they're forecasting accuracy is almost a factor of  
7 ten better than ours better in California.

8 And they underscored the fact that even though the  
9 Germans have ten times the wind and solar in California,  
10 they have not built any fast ramp gas turbine resources.  
11 They put all their effort into forecasting, and it's worked  
12 brilliantly. And so their reliance on forecasting has  
13 avoided tremendous expense, up to this point, in gas  
14 turbines.

15 And the NREL study was saying that if we forecast  
16 more frequently and if we communicate with each other  
17 through load serving entity territories we can get to 35  
18 percent 2017 with little addition of fast ramp resources.

19 MS. SMITH: Okay. Do you have any -- any  
20 additional comments you'd like to add?

21 MR. POWERS: Just a final comment. I apologize  
22 for the confusion, because the presentation that you saw  
23 before this was what I just said. And I'm back at the  
24 podium saying it without us looking at the -- the power  
25 point. But at the prehearing conference I requested 30

1 minutes to an hour to provide my rebuttal testimony. All  
2 you have in that PowerPoint is my rebuttal testimony with  
3 some additional rebuttal of Vidaver's surrebuttal, and  
4 SDG&E's late letter. And so the only reason I might have  
5 shown a little frustration while I was sitting down is I  
6 thought that we had a deal and that I was allowed to do  
7 that. That was sent to Jennifer last Thursday, but I did  
8 not copy the entire docket.

9 And so just so you understand, there was no effort  
10 to -- or intent to sneak something in.

11 HEARING OFFICER RENAUD: No. No. We understand  
12 that. And your correct that the -- the arrangement made at  
13 the prehearing conference was that you'd be able to provide  
14 the rebuttal testimony, and you've done that. This  
15 document, though, wasn't received until today by the people  
16 who are here. And for the reasons we stated earlier we -- we  
17 weren't able to admit that into evidence. But -- so we have  
18 your testimony, and we thank you for that.

19 MR. POWERS: I have no complaints. I've been able  
20 to say what I was going to say anyway. So --

21 HEARING OFFICER RENAUD: Good. Well, then --

22 MR. POWERS: -- I appreciate that.

23 HEARING OFFICER RENAUD: -- then we're all pleased  
24 by that.

25 Does anybody have any questions for -- for Mr.

1 Powers?

2 MS. FOSTER: Applicant does not have any questions  
3 at this time.

4 MR. BELL: No cross-examination on behalf of  
5 staff.

6 HEARING OFFICER RENAUD: All right. Then you're  
7 done. Thank you.

8 MR. POWERS: Thank you.

9 HEARING OFFICER RENAUD: And, Ms. Smith, anything  
10 further? I think we've pretty much exhausted what we'd --  
11 what we set out to do.

12 MS. SMITH: Yeah. The only other thing I'd like  
13 to do is just a quick cross. I've got six questions for the  
14 SDG&E, the author of the letter.

15 HEARING OFFICER RENAUD: Okay. Well, let's get to  
16 that letter now.

17 MS. SMITH: Okay.

18 HEARING OFFICER RENAUD: Okay.

19 MS. SMITH: And then I'll -- I'll be done, I  
20 promise.

21 HEARING OFFICER RENAUD: Thank you. Commissioner  
22 Peterman has a comment too.

23 PRESIDING MEMBER PETERMAN: I just -- I just  
24 wanted to make a quick comment. Well, Mr. Powers and Ms.  
25 Smith, in your testimony and your questions you touched upon

1 a number of issues related to renewable that -- the large  
2 issue of renewable. And I think as you are aware, I'm the  
3 lead commissioner on the IPR which focused on renewables  
4 this year. I know you were present at none of those  
5 workshops. And so I just -- I look forward to your comments  
6 and participation in that forum, as we are discussing many  
7 of the issues that you talked about, we've talked about in  
8 those workshops as well.

9 MS. SMITH: Okay.

10 HEARING OFFICER RENAUD: Thank you. Well, then  
11 good.

12 Now, let's address the -- the letter from SDG&E  
13 that I'm just pulling up here. This is a letter from Mr.  
14 Avery, who I believe is standing here in front of me;  
15 correct?

16 MR. AVERY: That is correct.

17 HEARING OFFICER RENAUD: All right. And it's  
18 dated July 17, 2012. And it has been marked for  
19 identification as Exhibit 130.

20 The committee has looked at this. And while  
21 we're -- we're perfectly happy to accept it as comment, and  
22 this is the sort of letter we frequently get as comment in  
23 these proceedings, we've having a hard time seeing it  
24 admitted into the record as evidence. And, in fact, we're  
25 going to deny its admission into evidence.

1           But we welcome it as comment. It's -- anything  
2 that comes in as comment is part of the record of this case  
3 and will be considered in the making of the decision. And  
4 furthermore, since your standing here, Mr. Avery, if you'd  
5 like to comment we can -- we can say at this point we're in  
6 a public comment portion of the hearing and would appreciate  
7 hearing from you.

8           MR. AVERY: I guess I should say good evening at  
9 this point in time.

10          HEARING OFFICER RENAUD: Good evening. And -- and  
11 since you're not -- what you're saying now will not be as a  
12 witness it doesn't -- it means that people won't be  
13 questioning you.

14          MR. AVERY: Okay.

15          HEARING OFFICER RENAUD: But it conversely means  
16 that we won't be considering your letter as formal evidence,  
17 but instead as comment.

18          MR. AVERY: Fair enough. Thank you. Okay. I  
19 presented this letter because I thought it was important to  
20 try to clarify some issues and some misrepresentation of  
21 facts. The facts are we have a desperate need for  
22 additional quick-start, quick-response peaking facilities in  
23 San Diego. You don't have to go back very far to when we  
24 had been working on trying to secure resources that would  
25 facilitate the retirement of the old South Bay Power Plant.

1 In fact, we had a number of meetings and hearings here in --  
2 in this very same room on that subject.

3 The ISO is the one who establishes the reliability  
4 criteria for San Diego Gas and Electric Company, and for  
5 the -- the bulk of the California grid at large. And we  
6 have to follow that criteria. When we think of what our  
7 demand is on system, renewable resources are a vital  
8 resource and something that we are targeting to secure a  
9 significant portion of our energy mix. But they do not have  
10 the capability to provide the resources we need in order to  
11 balance our system.

12 We do have two combined-cycle base load facilities  
13 here in San Diego. And the fact is the ISO shuts those off  
14 during most evenings of the year because they do not have a  
15 need for that resource. And what they do is they dispatch  
16 the peaking resources on a regular basis. And, in fact,  
17 what happens right now is the ISO dispatches the Encina  
18 power plant in minimum load conditions in order to have that  
19 resource available during peak times during the day.

20 As we look at our system, a couple of years ago  
21 into the next five to ten years, our system is going to be  
22 peaking and is already peaking in the evening hours.  
23 Seventy-five percent of our daily peaks over the last 12  
24 months occur between 7:00 and 9:00 p.m. And I'm sorry, but  
25 solar is not a resource that can satisfy that requirement.

1           If I look at the other resources on our system,  
2 they're already being accounted for. These are not things  
3 that are sitting idle and -- and we're not utilizing these.  
4 We do have a need.

5           I'm intrigued when people come and suggest that  
6 there's no load growth in San Diego because they look at  
7 what's happened over the last couple of years. Some of  
8 those very same people have made the argument of what  
9 happened during the energy crisis. And the fact of the  
10 matter is, after the energy crisis loads rebounded faster  
11 than anybody had anticipated. And -- and we forecast that  
12 that's probably what's going to happen again. There is a  
13 need on our system.

14           And by the way, all of this is taking into  
15 consideration and the assumption that San Onofre is  
16 operating on our system. It is not operating today. And I  
17 don't think anybody knows if and when these facilities will  
18 be back in service.

19           The concern I have is we have a responsibility to  
20 secure resources to satisfy our customers' requirements.  
21 And the dependence on older power plants is not a  
22 presumption that those power plants come at no cost. We are  
23 paying \$60 million, \$70 million, \$80 million a year to keep  
24 older power plants alive. And these are facilities that  
25 operate in the evening hours at heat rates that are two to

1 three time greater than the Pio Pico facility. And so I  
2 question that wisdom. And if you look at it from the  
3 standpoint of emissions, I guess the relative impact on the  
4 communities that we serve.

5 We've put forth an aggressive plan to have  
6 renewables. San Diego Gas and Electric is the first utility  
7 in the state -- and, in fact, about three years before the  
8 governor established 33 percent as a renewable target we put  
9 that on the table, and we are moving towards that goal.

10 When I think of what these resources have the  
11 capability to do, we have to worry about morning ramps, we  
12 have to worry about afternoon changes I load, we have to  
13 worry about the evening load. It's really interesting, if  
14 you look at just some of the charts that suggest that, well,  
15 during the summer months we're going to peak at 3:00 to 4:00  
16 p.m., well, the fact is we have secondary peaks that are  
17 8:00 p.m. that are within 100 or so megawatts.

18 If I take over the last 12 months, and I take  
19 the -- the 25 highest demands that we had on our system and  
20 I look at when they occurred, 50 percent of those occurred  
21 between 5:00 and 8:00 and 9:00 p.m. at night. And solar is  
22 not a resource that's viable to satisfy that requirement.  
23 It does not have the capability. That doesn't mean it's not  
24 important. It's vitally important. It's something we  
25 depend upon in order to satisfy our requirements.

1           But don't think that solar doesn't come at a cost.  
2 I mean, you heard some testimony a moment ago that suggests  
3 that solar is free because it may be put in by a customer.  
4 There's a cost behind that, and our customers are paying  
5 that cost, and they're paying a cost that, by the way,  
6 doesn't satisfy the type of capability that the Pio Pico  
7 Facility is designed specifically to do.

8           Now, there's no -- there's no doubt about the fact  
9 that we put out an RFO for a resource that satisfies our  
10 need, that doesn't also get satisfied by solar or wind. The  
11 fact is it's the resource we need, and that's why we put  
12 that forward.

13           I just thought it was important, and the reason I  
14 sent this letter in here, is there's a lot of speculation  
15 and suggestion that we can satisfy our requirements by  
16 wishing it away. It doesn't happen that way. Thank you.

17           HEARING OFFICER RENAUD: Thank you for your  
18 comment.

19           Is there anyone else who wishes to make public  
20 comment at this time? Is there anyone on the phone wishing  
21 to make a public comment? Okay.

22           A couple of quick housekeeping matters, then I  
23 think we can adjourn. With respect to the topics of air  
24 quality, alternatives, biology, land use, noise,  
25 socioeconomics, and water, does Applicant move into -- wish

1 to move into evidence it's exhibits and testimony in those  
2 areas?

3 MS. FOSTER: Yes.

4 HEARING OFFICER RENAUD: All right. And Exhibit  
5 130 is the one we're excluding, but that will be docketed  
6 and become part of the docket for the proceeding, 130 being  
7 the letter from SDG&E.

8 MS. FOSTER: Uh-huh.

9 HEARING OFFICER RENAUD: Okay. Staff, same  
10 question? I think we may have already -- no, we haven't for  
11 you either. So --

12 MR. BELL: We have not.

13 MR. BELL: Staff would move into evidence those  
14 remaining subjects within Exhibit Number 200 that are not  
15 closed --

16 HEARING OFFICER RENAUD: All right.

17 MR. BELL: -- in addition to the remaining  
18 subjects, if -- if not already been moved into evidence.

19 HEARING OFFICER RENAUD: All right. Good. And  
20 Ms. Smith for Simpson, same question, do you wish to move  
21 into evidence your Exhibits 300, 301, 302, and 303?

22 MS. SMITH: Correct. 303 is the battery storage  
23 one; correct?

24 HEARING OFFICER RENAUD: That's right. And 304  
25 was the --

1 MS. SMITH: Yes.

2 HEARING OFFICER RENAUD: -- new document that  
3 we've excluded.

4 MS. SMITH: But you've accepted it as a comment;  
5 correct?

6 HEARING OFFICER RENAUD: Yes. Exactly.

7 MS. SMITH: Okay.

8 HEARING OFFICER RENAUD: Thank you. Right. It  
9 will be docketed.

10 MR. BELL: And just so the record is clear,  
11 Staff's exhibits 201, 202, 203, 204, 205, 206, and 207 we'd  
12 be moving into evidence as well.

13 HEARING OFFICER RENAUD: Yes. Yes. Correct.  
14 Okay.

15 Any objection by any party to any other parties'  
16 evidence as we just stated? No objection? All right.  
17 Thank you.

18 (Exhibit Nos. 201-205 and 300-303, Admitted)

19 HEARING OFFICER RENAUD: We'll look for your  
20 briefs at the -- by the deadlines we stated. And other than  
21 that, we'll consider the evidentiary record closed and this  
22 hearing adjourned. Thank you.

23 (The Prehearing Conference adjourned  
24 at 8:06 p.m.)

25 --oOo--

## CERTIFICATE OF REPORTER

I, MARTHA L. NELSON, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Evidentiary Hearing; that it was thereafter transcribed.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, or in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 31st day of July, 2012.

/s/ Martha L. Nelson  
MARTHA L. NELSON

## CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Martha L. Nelson  
MARTHA L. NELSON, CERT\*\*367

July 31, 2012